

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

COMPANY PETITION NO. (CAA) 5/Chd/Hry/2024

Connected with

COMPANY APPLICATION NO. (CAA) 45/Chd/Hry/2023

IN THE MATTER OF:

GMR AIRPORTS LTD

Registered office at- TEC Cyber City, Level 18,
Tower A, Building No.5, DLF Cyber City,
DLF Phase- III, Gurugram- 122002, Haryana,
Email: Gal.secretarial@gmrgroup.in

...Petitioner / Transferor Company 1

AND

GMR INFRA DEVELOPERS LIMITED

Registered office at- Unit No. 12, 18th Floor,
Tower A, Building No. 5, DLF Cyber City,
DLF Phase- III, Gurugram- 122002, Haryana,
Email: csd-group@gmrgroup.in

...Petitioner / Transferor Company 2

AND

GMR AIRPORTS INFRASTRUCTURE LIMITED

Registered office at- Unit No. 12, 18th Floor,
Tower A, Building No.5, DLF Cyber City,
DLF Phase- III, Gurugram- 122002, Haryana
Email: Gilcosecy@gmrgroup.in

...Petitioner / Transferee Company

Order Delivered on: 11.06.2024

Section: 230 to 232 of the Companies Act, 2013

CORAM:

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

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT

For Petitioner Companies:	Mrs. Munisha Gandhi, Senior Advocate Ms. Eshna Kumar, Advocate Mr. Anirudh Das, Advocate Mr. Vaibhav Sharma, Advocate Ms. Salina Chalana, Advocate
For RD:	Mr. Vineet Khatri, Company Prosecutor
For OL:	Mr. Edward Augustine George, Advocate
For Income Tax Department:	Mr. Yogesh Putney, Sr Standing Counsel

JUDGMENT

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

The captioned Second Motion Petition is preferred by the Petitioner Companies jointly under Section 230 to 232 of the Companies Act, 2013 read with the Companies (Compromise, Arrangements, and Amalgamations) Rules, 2016 for approval of the Scheme of Amalgamation (hereinafter referred to as '**Scheme**'), as contemplated between the Companies, its Shareholders and Creditors. A copy of the Scheme has been placed on record. The "Appointed date" as indicated in Part-A, Clause 2.1.4 of the proposed Scheme of Amalgamation is 01.04.2023.

2. GMR Airports Limited (hereinafter, referred to as the "**Petitioner /Transferor Company 1**") having CIN U65999HR1992PLC101718) issued from the Registrar of Companies, NCT of Delhi and Haryana as per the Certificate of Incorporation issued on 02.03.2022, is a company incorporated on 06.02.1992 in the state of Tamil Nadu, under the Companies Act, 1956. The registered office of Transferor Company 1 was shifted from Karnataka to Haryana, with its present registered office being at TEC Cyber city, Level 18,

Tower A, Building No.5, DLF Cyber City, DLF Phase- III, Gurugram- 122002. The Company is registered with the Reserve Bank of India (RBI) as a Core Investment Company and is engaged in the business of holding the shares and securities of, and lending funds to, group companies, which, in turn own, develop, manage and/or operate airports and related infrastructure in India and abroad. The Transferor Company 1 is also engaged in certain Airport related businesses including EPC services. It is further stated that the Transferor Company 1 is a subsidiary of the Transferee Company. The authorized share capital of the Company is Rs. 30,000,000,000/- while its Issued, Subscribed and Paid-Up Capital is Rs. 18,495,251,090/-.

3. GMR Infra Developers Limited (hereinafter referred to as the **“Petitioner/Transferor Company 2”**), having CIN U74999HR2017 PLC113214 issued from the Registrar of Companies, NCT of Delhi and Haryana as per the Certificate of Registration issued on 11.07.2023, is a company incorporated on 27.02.2017 in the State of Maharashtra under the provisions of the Companies Act, 2013. The registered office of Transferor Company 2 was shifted from Maharashtra to Haryana, with its present registered office being at Unit No. 12, 18th Floor, Tower A, Building No. 5, DLF Cyber City, DLF Phase- III, Gurugram- 122002, Haryana. The authorized share capital of the Company is Rs. 5,00,000/-, while its Issued, Subscribed and Paid-Up Capital is Rs. 5,00,000/-. The company is engaged in the business of infrastructure construction services.

4. GMR Airports Infrastructure Limited (hereinafter referred to as the **“Petitioner /Transferee Company**), having CIN L45203HR1996PLC113564

issued from the Registrar of Companies (“RoC”), NCT of Delhi and Haryana as per the Certificate of Registration issued on 24.07.2023, is a company incorporated on 10.05.1996 in the state of Andhra Pradesh under the provisions of the Companies Act, 1956. The registered office of Transferee Company was shifted from Maharashtra to Haryana, with its present registered office being at The Company has its registered office at Unit No. 12, 18th Floor, Tower A, Building No. 5, DLF Cyber City, DLF Phase- III, Gurugram- 122002, Haryana, India. The authorized share capital of the Company is Rs. 14,550,000,000/-, while its Issued, Subscribed and Paid Up Capital is Rs. 6,035,945,275 /-. The company is engaged in the business of infrastructure activities, executing projects either by itself or through special purpose vehicles, providing support activities, as well as, supervisory and management functions, to its group. It is stated that the Transferee Company is the holding company of the Transferor Company 1 and Transferor Company 2. The Equity Shares of the Transferee Company are listed on BSE Limited and NSE Limited.

5. The ‘Transferor’ Companies as well as the Transferee Company are together called **‘Petitioner Companies’** hereinafter. The Registered offices of all the Petitioner Companies being in the State of Haryana; the present petition is amenable to the jurisdiction of this Bench.

6. From the records, it is seen that the First Motion Application (CAA)N0.45/CHD/HRY/2023 was filed by the Petitioner Companies seeking directions for convening the meeting of Equity Shareholders of Transferee Company and for dispensing with the requirement of convening the meetings

of the Equity Shareholders of the Transferor Companies, Preference Shareholders of Transferor Company 1, and of Secured and Unsecured Creditors of the Petitioner Companies.

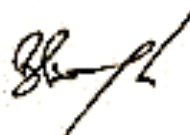
Accordingly, this Tribunal vide its Order dated 10.10.2023 issued directions to dispense with the meetings of Equity Shareholders of both the Transferor Companies; meetings of the Preference Shareholders of Transferor Company 1; Meetings of Secured Creditors of the Transferor Company 1 and Transferee Company, and Meetings of the Unsecured Creditors of all the 3 Petitioner Companies. However, as prayed by the Petitioner Companies, directions were issued for convening the meeting of Equity Shareholders of the Transferee Company.

7. As per the Report of Chairperson dated 07.12.2023 filed on 08.12.2023 vide Diary No. 02915/6, Equity Shareholders of the Transferee Company approved a Resolution approving the Scheme by 99.38% voting. The voting results, as placed on record, are reproduced below:

I. Voted in favour of the resolution:

Mode of Voting	Number of Equity Shareholders voted	Number of valid votes cast by them (number of equity shares)	% of total number of valid votes cast
Remote E-voting	796	5,26,98,86,052	99.38
E-voting at the Meeting	5	1,115	Negligible
Total*	801	5,26,98,87,167	99.38

**There are 3 shareholders who partially voted in favour and partially against the resolution.*



8. Subsequently, the Second Motion petition was moved by the Petitioner Companies in connection with the said Scheme of Amalgamation for issuance of notices to: a) the Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; b) The Registrar of Companies, NCT of Delhi and Haryana; c) The Official Liquidator (attached to the High Court of Punjab and Haryana); d) Income Tax Department through its nodal office and the jurisdictional assessment office of each of the Petitioner Companies; (e) Securities and Exchange Board of India Mumbai, Maharashtra; (f) BSE Limited Mumbai, Maharashtra; (g) National Stock Exchange of India Limited, Mumbai, Maharashtra; and (h) the Reserve Bank of India, Delhi.

9. Accordingly, directions were issued vide Order dated 01.03.2024 of this Tribunal to the Petitioner Companies to serve notices upon the concerned statutory authorities and carry out necessary publication about the said Scheme in “Financial Express” (English) and “Jan Satta” (Hindi) newspapers, both Delhi - NCR editions. In compliance with the directions, the Petitioner Companies duly filed Affidavits of Service vide Diary Nos. 03987/4, 03987/5 and 03987/6 on 21.05.2024 confirming publication of Notices of the Company Petition in the “Financial Express” (English) and “Jan Satta” (Hindi) on 23.04.2024 and service of Notices to the concerned statutory authorities.

10. Upon receiving the notice, the RD filed its Report dated 07.05.2024 vide Diary no. 03987/11 filed on 13.05.2024 making the following observations in Para 10 of its report:

10. That observations of the Office of Registrar of Companies, NCT of Delhi & Haryana vide letter dated 09.04.2024 are as under:-

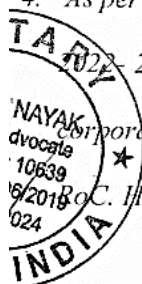
1. *Transferor Company no. 01 is a non-banking finance company registered with RBI. However, the paper book of the application submitted to this office does not contain the copy of the NOC/consent letter received from the RBI. Hence, the company may be asked to provide the same.*

2. *In case of Transferor Company no.01 and Transferee Company auditor has stated in the audit report for the F.Y.2022-23 that the company has not paid the certain statutory dues on account of dispute and the cases for the same are being pending before their respective authority. Hence, the clarification from the Income Tax Department may be sought.*

3. *In case of Transferor Company no. 01, as per notes to account of the audited financial statements for the F.Y. 2022-23, it is seen that the company has filed various appeal before the commissioner of income tax (Appeal) and GST Department. Further, received various show cause notice cum demand from the Service tax department and GST department and also RBI during the year ended 31.03.2021, conducted an u/s 45N of the RBI Act, 1934. Hence, the clarification from the respective Departments may be sought.*

4. *As per audited financial statement of the Transferor Company no.01 for the F.Y. 2022-23, it is seen that the more than 10% of the shares are held by the body corporates. However, no e-form BEN-2 has been filed by the company with the ROC. Hence, the company may be asked to clarify the same.*

5. *As per audited financial statements of the Transferor company no. 02 and Transferee Company for the F.Y. 2022-23, it is seen that the company has*



granted loans and advances to its related parties. Hence, the company may be asked to ensure to compliance of the provisions of the sections 185, 186 and 188 of the Companies Act, 2013.

6. In case of Transferor Company no. 02, it is stated in the order dated 10.10.2023, of the Hon'ble National Company Law Tribunal, Chandigarh bench passed in company application no. CA (CAA) no. 45/CHD/HRY/2023 that there are nil secured creditors in the company. Therefore, there is no scope of any meeting. However, as per master data it is seen that the one charge of Indusind Bank Ltd (Charge id-100341715) vide SRN R42530501 dated 28.05 2020 of Rs. 5,00,00,000 are still not satisfied. Hence, the same may be clarified from the company.

7. In case of Transferee Company auditor has stated in the audit report for the year 2022- 23, that the company has defaulted in repayment of loans and other borrowings and the details for the same are as below:-

Nature borrowing including Debt securities	Name of lender	Amount not paid on due date (Rs. In Crore)	Whether principal or interest	No. of days delay or unpaid till the date of audit report
Foreign Currency Convertible Bonds	Kwait investment authority	72.36	Interest	168-533

Hence, the clarification from the company may be sought.

8. In case of Transferee Company a complaint is pending vide SRN no. J00061943.

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

The RD has thus raised certain concerns. Firstly, there being no NOC/ consent letter from the RBI despite the Transferor Company 1 being an NBFC registered with the RBI. Secondly, the Auditor has stated that the Transferor Company 1 and Transferee Company have not paid certain statutory dues on account of dispute in the F.Y. 2022-2023. Thirdly, the Transferor Company 1 has filed various appeals before the Commissioner of Income Tax (Appeal) and GST Department, and has also received various show cause notice cum demand from RBI under Section 45 N of the RBI Act, 1934. Fourthly, no e-form BEN-2 has been filed by the Transferor Company 1 despite more than 10% shares of its being held by body corporates as per the audited Financial Statement of the Transferor Company No. 1 for the F.Y. 2022-2023. Fifthly, the Transferor Company 2 be asked to ensure compliance of the provisions of Sections 185, 186 and 188 of the Companies Act, 2013 as it has granted loans and advances to its related parties. Lastly, the RD has pointed out that in respect of Transferor Company 2 there is one charge of Rs. 5,00,00,000/- dated 28.05.2020 of Indusind Bank Ltd, which is still not satisfied despite the Company stating that it has NIL Secured Creditors.

11. In response to the aforesaid observations of RD, Petitioners through their Ld. Counsel filed their reply vide Diary No. 03987/12 dated 09.05.2024, stating that the responses sent vide letter dated 26.04.2024 by the Petitioners to the RD are reflected in Paragraph 11 of the RD's Report, which are reproduced overleaf:

11. That Transferee Company vide its letter dated 26.04.2024 (**Annexure -- B**) has replied to the query of the Registrar of Companies as under : -

1. *The Petitioner companies, pursuant to the order of Hon'ble NCLT, have served a copy of Notice with your good office and all the applicable regulators including the Registrar of Companies (RoC), Delhi & Haryana on 05th March, 2024 along with the Company Petition filed by the Petitioner Companies with the Hon'ble NCLT on 15th December, 2023.*

The annexure "P-33" to the Company Petition contains the Communication by Reserve Bank of India ("RBI") dated 10th July, 2023 to Petitioner/Transferor Company 1 conveying it's no objection to the Scheme and communication by the Petitioner/Transferor Company 1 on 7th August, 2023, to the RBI of its affirmation to the compliances listed in the RBI letter of 10th July, 2023.

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The Aforesaid letters are attached as "Annexure-01 (Colly)".

2. *We would like to bring to your kind attention that the concerned Assessing Officer of the Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore, in relation to the assessments of the Transferor Company 1 and the Transferee Company, vide their letter dated 01st December, 2023 had shared their response to the scheme, with Hon'ble NCLT, Chandigarh Bench. It may be noted that in the said letter, the Assessing Officer had already highlighted about the pending proceedings and pending demand against the Transferor Company 1 and the Transferee Company for the assessment years.*

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It may further be noted that clause 8.2 and 12.2 of the Scheme, adequately provide for treatment of Tax related issues.

3. *As detailed above for query No. 2, the Scheme adequately provides for treatment of Income Tax related matters. Further in terms of clause 5.2.7 and 9.2.7, it has specifically been provided that any direct or indirect tax dues, payable by the Transferor Company 1 or the Transferor Company 2, as the case may be, shall upon the scheme becoming effective, be paid by the Transferee Company.*

4. The Current shareholding pattern of the Transferor Company 1 is as follows:

Name of Equity Holder	No. of Equity Shares	% of Holding
AEROPORTS DE PARIS S.A. (ADP)	35,37,83,144	25.15
GMR AIRPORTS INFRASTRUCTURE LIMITED (FORMERLY KNOWN AS GMR INFRASTRUCTURE LIMITED) (GIL)	42,20,00,837	30.00
GMR INFRA SERVICES PRIVATE LIMITED (WHOLLY OWNED SUBSIDIARY OF ADP)	33,54,84,897	23.85
GMR INFRA DEVELOPERS LIMITED (WHOLLY OWNED SUBSIDIARY OF GIL)	29,54,00,588	21.00
RAJESH KUMAR ARORA*	1	0.00
ANKIT KUMAR BAROLIA*	1	0.00
G.R.K. BABU*	1	0.00
MADHVA B TERDAL*	1	0.00
Total	1,40,66,69,470	100.00

*Nominees of GMR Infra Services Private Limited

Pursuant to Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018, the provisions of the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable to the extent the share of the reporting company is held by its holding reporting company

It is provided that the details of such holding reporting company is reported in Form No. BEN-2. Transferee Company along with Transferor Company 2 (a wholly owned subsidiary of Transferee Company) holds more than 50% of the paid up share capital of the Transferor Company 1, therefore making Transferee Company the Holding Company of Transferor Company 1. In furtherance to same, Transferor Company 1 has filed form BEN-2 on 23rd September, 2019, intimating the details of its Holding Company and Ultimate Holding Company who has filed form BEN-2. Copy of the same is attached as "Annexure-2"

AEROPORTS DE PARIS S.A. is the Holding Company of GMR INFRA SERVICES PRIVATE LIMITED.

AEROPORTS DE PARIS S.A is a Body Corporate controlled by the Government of France. Further Pursuant to Rule 8 of the Companies (Significant Beneficial Owners) Rules, 2018, the provisions of the Companies (Significant Beneficial Owners) Rules, 2018 are not applicable to the extent the share of the reporting company is held by a body corporate which is controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments. Hence, the Transferor Company 1 is not required to file form BEN-2 to the extent the share capital is held by ADP (i.e a body corporate controlled by Government of France).

5. The Petitioner Companies are duly compliant with the provisions of Section 185, 186 and 188 of the Companies Act, 2013.

Further, Petitioner Companies are in the business of providing infrastructural facilities as per Schedule VI of the Companies Act, 2013, Hence, nothing provided in Section 188(1)(b) is applicable on the Petitioner Companies.

Further, the Transferor Company 2 is a Wholly owned Subsidiary of the Transferee Company.

6. Transferor Company 2 currently and as per the financials and consents submitted with Hon'ble NCLT has No Secured Creditors.

The Transferee Company has availed an Overdraft facility from IndusInd Bank during the year 2020 for which the Transferor Company 2 has given its Fixed Deposit (FD) as security. Hence, form CHG-1 was filed by the Transferor Company 2.

However, the said overdraft facility was duly paid by the Transferee Company and the concerned account was closed, effectively releasing the security on 27th August, 2020.

However, the period during which the said facility was availed and closed, being within the Covid-19 Pandemic and due to operational restrictions, the Transferor Company 2 was not able to obtain No Objection Letter for satisfaction of the said charge.

Further, the Transferor Company 2 has received the No Objection Certificate from the Charge Holder i.e IndusInd Bank dated 25th April, 2024 and the same has been filed with MCA through form CHG-4 vide SRN AA7647896.

The aforesaid No Objection Certificate for satisfaction of charge with MCA and Challan of form CHG-4 are attached as "Annexure-3 (Colly.)"

Hence, the fact that the Transferor Company 2 does not have Secured Creditors is



terms of the agreements entered into by the Transferee Company with Kuwait Investment authority (KIA) and by mutual agreement, KIA has from time to time been extending the time for payment of Interest. The Transferee Company is in negotiation with KIA for further extension of time for the FY 2022-23 also. Further, the parties are in negotiation for conversion of the FCCB into Equity.

8. Transferee Company being an equity listed entity, is reporting the status of complaints to the exchanges on quarterly basis pursuant to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and ensure that all the complaints received during the period are duly addressed and resolved.

The aforesaid complaint pertains to Investor of the Transferee Company requesting the Transferee Company to take necessary action for the form IEPF-5 filed by the aforesaid

investor, for claiming his shares/dividend, vide SRN T20713426 dated 30th May, 2021.

This is to inform that the Transferee Company has duly filed the E-Verification report for the above mentioned form IEPF-5 within the statutory timelines as prescribed by IEPF Authority and the same has already been "APPROVED" by MCA confirming vide email dated 22nd December, 2021.

A copy of the Approval Email dated 22nd December, 2021, as received by the Transferee Company against the above mentioned SRN and Screenshot of the status of the form on the MCA website (mca.gov.in) is attached as "Annexure-4 (Colly.)".

Hence, the subject matter of the complaint has already been resolved by the Transferee Company.

9. *The Transferor Company 1 and Transferor Company 2 have duly paid all the applicable stamp duties on its current Authorized Share Capital.*

Pursuant to provisions of Section 232 (3)(i) of the Companies Act, 2013, "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 ~~And~~ its authorised capital subsequent to the amalgamation."

Hence, the transferee company will be compliant with the aforesaid provisions and the provisions of the applicable stamp act and all the applicable stamp duty will be duly paid.

12. During the course of hearing of the matter on 10.05.2024, it was stated by the Ld. Company Prosecutor appearing for the RD that after seeking instructions from their Headquarters, the Reply filed by the Petitioner Companies to the Report of RD is found satisfactory, and RD has no objection to the Scheme. Further, in compliance with the order dated 13.05.2024 of this Tribunal, the RD filed an Additional Affidavit dated 31.05.2023 vide Diary No. 03987/17 clearly stating that they are satisfied with the reply of the Petitioners dated 26.04.2024 and they do not have any

further observations. The relevant excerpts of the Affidavit are reproduced below:

4. That in pursuance to the directions of the Hon'ble NCLT, the reply of Petitioner Companies dated 26.04.2024 has been examined by the office of Deponent and comments with respect to the para 10 of the affidavit dated 07.05.2024 are as under :-

With respect to query no. 1, 2, 3 : These are of matter of facts.

With respect to query no. 4 : The reply of the petitioner companies is found satisfactory that the Transferor Company 1 has filed BEN-2 vide SRN H93127728 dated 23.09.2019.

With respect to query no. 5 : The reply of the petitioner companies found satisfactory with regard to related party transaction as main object of Petitioner Companies is providing infrastructural facilities.

With respect to query no. 6 : This is a matter of fact.

With respect to query no. 7 : These facts are submission before the Hon'ble Tribunal.

With respect to query no. 8 & 9 : The reply of the Company is found satisfactory as e-Form IEPF-5 filed by Transferee Company vide SRN T20713426 dated 30.05.2021 is approved as per data available in MCA-21 portal.

In respect to ROC report and reply filed by the companies regarding abovesaid matter, there are no further observations from office of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi.

13. Thus, from the submissions made during the hearing on 10.05.2024 by the Ld. Company Prosecutor appearing for the RD and the additional affidavit 31.05.2023 filed by the RD vide Diary No. 03987/17 (ibid), it is understood that the RD has no objection to the Scheme. Hence, it is presumed that there is no such clause in the Scheme, which could be considered oppressive or against the public policy. Hence, we proceed in the matter to examine the report of Income Tax Department.

14. On notice, the Income Tax Department (“ITD”) Bengaluru filed its Reports for Transferor Company 1 and Transferee Company vide Diary No. 03987/14 on 13.05.2024, the relevant extracts of which are reproduced below:

(b) On the same effective date, Transferor company 2 amalgamates with Transferee company (Part D of the Scheme)

The equity shareholders of Transferor company 2 are allotted equity shares in Transferee company. OCRPS shares held by Transferee company will be extinguished. OCRPS held by others in Transferor company 2 will be deemed to be issued by Transferee company.

2.3 Details of any proceedings pending against the assessee under IT Act

Reassessment /assessment proceedings are pending against GAL (Transferor Company 1) for AY 2019-20, AY 2021-22 and AY 2022-23.

Assessment proceedings are pending against GIL (Transferee company) for AY 2021-22 and AY 2022-23.

Appeal proceedings are pending for earlier AYs in the case of both companies.

2.4 Details of tax demand pending (AY wise)

In the case of Transferor Company 1 -M/s GMR Airports Ltd -, demand is outstanding for AY 2016-17, AY 2017-18 and AY 2018-19, demands have been stayed as assessee has paid 20% of the demand raised and appeals filed by the assessee are pending for disposal.

In the case of Transferee Company, demand is outstanding for AY 2016-17, AY 2015-16 and AY 2014-15, demands have been stayed as assessee has paid 20% of the demand raised and appeal is pending for disposal.

Remarks of AO :

(i) Business/economic rationale for not amalgamating Transferor company 1 directly with Transferee company is not clear from the scheme of arrangement.

(ii) Cancellation of inter-corporate loans/advances/investments/OCRPS in Transferor company 2 or Transferor company 1 subsequent to approval of the scheme of arrangement can't be claimed by Transferee company as capital loss /business loss as the scheme of arrangement is proposed to be tax neutral.

(iii) Whether the transfer as per the Scheme of Arrangement constitutes a tax neutral amalgamation as per provisions of Income Tax Act 1961 and loss/deduction claimed consequent to the amalgamation will have to be examined and decided based on the facts and merits of the case at the time of assessment proceedings.

Therefore it is requested that it may be held that approval of scheme of arrangement by Hon'ble National Company Law Tribunal alone may not make the scheme tax neutral as per provisions of Income Tax Act 1961.

Submitted for kind information.

With regard to the Transferor Company 2, the ITD Mumbai vide their letter dated 30.11.2023 (annexed by the Petitioner Companies in Volume VI from page 1087-1088) replied the following:

2. As per above referred petition, it is seen that the companies namely, GMR Airports Limited (PAN: AAACM 7791H) (Transferor Company No. 1), GMR Infra Developers Limited (PAN: AAGCG7159M) (Transferor Company No. 2) and GMR Airports Infrastructure Limited (PAN: AABCG8889P) (Transferee Company) have filed Composite Scheme of Amalgamation and Arrangement u/s. 230-232 r.w.s. 66 of the Companies Act, 2013 for Scheme of Arrangement.

3. Since the jurisdiction over GMR Airports Limited (PAN: AAACM7791H) (Transferor Company No. 1) and GMR Infrastructure Limited (PAN: AABCG8889P) (Transferee Company) does not vest with this office, no records is available in this office. The Jurisdiction over GMR Infra Developers Limited (PAN: AAGCG7159M) vest with this office. However, it is seen from the records that there is no outstanding demand and no proceedings is pending in the case of GMR Infra Developers Limited (PAN: AAGCG7159M) (Transferor Company No. 2/Amalgamating Company).

4. The above may be taken on record.

Copy to:

The Officer I/c.

GMR Infra Developers Limited

Naman Center, 7th Floor,

G-Block, BKC,

Mumbai.

On perusal of the above report with reference to the Transferor Company 2, it is observed that the IT Department, Mumbai has no objection to the Scheme.

15. The Petitioners have filed reply to the abovementioned observations of the IT Department vide Diary No. 03987/10 filed on 09.05.2024, the relevant excerpts of which are reproduced overleaf:

2. At the outset, it is submitted that the Report issued by the IT Department, Mumbai with reference to the Petitioner /Transferor Company 2, raises no objection to the Scheme of Amalgamation and Arrangement among GMR Airports Limited and GMR Infra Developers Limited and GMR Airports Infrastructure Limited (formerly GMR Infrastructure Limited) and their respective shareholders and creditors (“Scheme”) and has confirmed that there are no outstanding demand or proceedings against the Petitioner/ Transferor Company 2.

3. Further, the report issued by the IT Department, Bangalore with reference to the Petitioner/Transferor Company 1 and Petitioner/Transferee Company also raises no objection to the Scheme and the report only marks certain general comments/observations.

4. The report filed by the Income Tax Department with reference to the Petitioner/Transferor Company 1 and Petitioner/Transferee Company do not object to the approval of the Scheme and mentions about the pending assessments/re-assessments/demand/appellate proceedings against the Petitioner/Transferor Company 1 and Petitioner/Transferee Company.

5. The Petitioner Companies' at para 31 of the Company Petition, filed before this Hon'ble Tribunal have submitted that subject to exercise of available appellate remedies, the Petitioner Companies undertake to pay the tax demands upon final order(s) being passed. Further, the sanction of the Scheme by this Hon'ble Tribunal shall not prejudice the rights of the IT Department to collect any dues/ demands arising from pending or future proceedings in accordance with applicable law.

To this effect it has also been submitted that the sanction order of this Hon'ble Tribunal may appropriately provide for protection of the rights of the IT Department and that the sanction of the Scheme shall not prejudice the rights of the IT Department to examine the tax treatment upon the Scheme being made effective. Hence, rights of the IT Department shall not be curtailed by reason of sanction of the present Scheme.

6.

- a. With reference to the clause (i) of the Comment in the report dated 1st December, 2023 of the IT Department, Bangalore, towards the business/economic rationale of not amalgamating the Transferor Company 1 directly with the Transferee Company, it is submitted that the Transferor Company 2 also holds equity shares of the Transferor Company 1. As set out at clause 1.4 of the Scheme, the intent of the Scheme is also to streamline the Corporate structure of the Petitioner Companies. Therefore, in view of the above shareholding pattern, the Scheme provides for the amalgamation of the Petitioner/Transferor Company 1 with Petitioner/ Transferor Company 2 and the amalgamation of merged Petitioner/Transferor Company 2 with the Petitioner/Transferee Company.
- b. With reference to the clause (ii) and (iii) of the Comment in the report dated 1st December, 2023 of the IT Department, Bangalore, it is stated that the tax neutrality with respect to Transfer of assets/liabilities and issue of shares made under the Scheme may be examined by the Income Tax Department in assessment proceedings and the sanction of the Scheme by this Hon'ble Tribunal shall not in any manner prejudice the rights of the Income Tax Department to examine the tax implications arising from the implementation of the Scheme. As

already submitted, subject to exercise of available appellate remedies under law, the Petitioner Companies undertake to pay the tax demands when the same become due for payment and upon final order(s) being passed.

- c. The Petitioner Companies further submit that Clause 5.2.7 and Clause 9.2.7 of the Scheme provide that any tax dues payable by or refundable to the Transferor Company 1 and Transferor Company 2, shall be payable/refundable by or to the Transferee Company.

Thus, with regard to the Report filed with reference to the Transferor Company 1 and Transferee Company by the IT Department, Bangalore, the Petitioners have replied that they undertake to pay the tax demands upon the final order being passed, and that the sanction of the Scheme shall not prejudice the rights of the IT Department to collect any dues/demands arising from pending future proceedings in accordance with applicable law. The Petitioner Companies have further submitted that the Transferor Company 2 also holds equity shares of the Transferor Company 1 thus, the issue of not amalgamating the Transferor Company 1 directly with the Transferee Company does not arise. With regards to the issue of tax neutrality, the Transferee Company further undertake to pay the tax demands, when the same becomes due for payment and upon the final order being passed and the sanction of the Scheme by this Tribunal shall not in any manner prejudice the rights of the Income Tax Department to examine the tax implications/neutrality arising from the implementation of the Scheme. As regards the Report of ITD Mumbai in respect of Transferor Company 2, we have already noted above their no objection.

16. Furthermore, in compliance with the order dated 13.05.2024 of this Tribunal, the Ld. Counsel for the Petitioner Companies filed a Compilation of reports Vide Diary No. 03987/20, filed on 31.05.2024 attaching therewith Reports of the Income Tax Departments of Bengaluru dated 21.05.2024. The relevant extract of the affidavit with regard to the Report of ITD Bengaluru is reproduced below:

AFFIDAVIT ON BEHALF OF THE INCOME TAX DEPARTMENT

I, Tirupati Mithun, Deputy Commissioner of Income Tax, Central Circle-2(2), Bengaluru (i/c), do hereby solemnly affirm and say as follows:

1. That I am the Assessing Officer of M/s GMR Airports Infrastructure Ltd (GIL) (AABCG8889P) (Transferee company) and M/s GMR Airports Ltd (Transferor company 1).

2. That the petitioner companies (M/s GMR Airports Infrastructure Ltd (GIL) and M/s GMR Airports Ltd (GAL) have filed affidavits dated 08.05.2024 before the Hon'ble National Company Law Tribunal, Chandigarh Bench against the report submitted by this office i.e. O/o DCIT, Central Circle -2(2), Bengaluru vide letter dated 01.12.2023.


3. That the merger petition along with affidavits filed by the petitioner companies have been perused and it is hereby submitted that this office has No Objection in the Scheme of Amalgamation and arrangement between M/s GMR Airports Ltd (GAL) and M/s GMR Airports Infrastructure Ltd (GIL) u/s 230 to 232 of Companies Act 2013.




DEPONENT

On perusal of the Report of the Income Tax Department, Bengaluru (ibid) regarding Transferor Company 1 and the Transferee Company, it is observed that the Income Tax Department has no objection to the Scheme under consideration.

17. Similarly, in compliance with the order dated 13.05.2024 of this Tribunal, the Ld. Counsel for the Petitioner Companies filed a Compilation of reports Vide Diary No. 03987/20, filed on 31.05.2024 attaching therewith the Reports Income Tax Department Mumbai, vide their affidavit dated 24.05.2024 regarding Transferor Company 2, has observed that the Income Tax Department has no objection to the Scheme under consideration. The relevant extract of the affidavit ITD Mumbai is reproduced below:


 COMPANY PETITION (CAA) NO. 05/CHD/HRY OF 2024
 CONNECTED WITH COMPANY APPLICATION (CAA) NO. 45/CHD/HRY OF 2023
 (Under Sections 230 to 232 of the Companies Act, 2013)
 IN THE MATTER OF THE COMPANIES ACT, 2013 **श्री. अतुल कि. किरडे**
 AND

IN THE MATTER OF:

Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, arrangements and Amalgamations) rules, 2016.

AND

IN THE MATTER OF :

Composite scheme of amalgamation and arrangement among M/s GMR Airports Infrastructre Ltd (GIL) (AABCG8889P) with M/s. GMR Airports Limited (GAL) (AAACM 7791M) and M/s. GMR Infra Developers Limited (GIDL) (AAGCG7159M) and their respective shareholders and creditors.

AFFIDAVIT ON BEHALF OF THE INCOME TAX DEPARTMENT

I, Rakesh Kumar Sinha, Income-tax Officer, Ward-14.1.1, Mumbai, do hereby affirm and say as follows:

1. That I am the Assessing Officer of M/s. GMR Infra Developers Limited (GIDL) (AAGCG7159M) (Transferor Company 2).
3. MR Airports Infrastructre Ltd (GIL) , M/s GMR Airports Ltd (GAL) and M/s. GMR Infra Developers Ltd have filed affidavits dated 08.05.2024 before the Hon'ble National company Law Tribunal, Chandigarh Bench against the report submitted by this office vide letter dated 30.11.2023.
4. That the merger petition with affidavits filed by the petitioner companies have been perused and it is hereby submitted that this office has No Objection in the Scheme of Amalgamation and arrangement between M/s GMR Airports Ltd (GAL) with M/s. GMR Infra Developrs Ltd (GIDL) and then with M/s. GMR Airports Infrastructure Ltd (GIL) u/s. 230 to 232 of Companies Act, 2013.

VERIFICATION

Verified at Mumbai on this 24th day of May 2024 that the contents of paragraph 1 to 3 of the above affidavit are true to my knowledge and nothing material has been concealed therefrom.



Rakesh
DEPONENT

राकेश कुमार सिन्हा
RAKESH KUMAR SINHA

Thus from, Reports and Affidavits of ITD Bengaluru, and Mumbai along with submissions made by the Ld. Counsel appearing for the ITD, it is understood that the IT Department has no objection to the Scheme of Amalgamation. However, it is made clear that post-amalgamation, the IT Department would be at liberty to recover its outstanding demand/dues of the Transferor Companies (if any) from the Transferee Company as per law.

18. Now, we proceed to examine the report of the Official Liquidator (OL). OL has filed its report dated 15.04.2024 vide Diary No. 03897/3 on 16.04.2024 and raised the following observations:

14. **Observations of Official Liquidator:-**

1. **Transferor Company 1 is a core investment company:-** Transferor Company 1 being a core investment company (NBFC) should comply with the Rules, Regulations and provisions of RBI Act. It is pertinent to mentioned here that RBI have given No Objection to the Scheme, which is enclosed as Annexure P-33 with the present application.
2. **Pending Litigations:-** As per information provided by the Transferor Company 1 and 2 various litigations of Civil nature w.e.t. direct/In-direct taxes etc. are pending before the various authorities, details of which is annexed with the Report as **Annexure R-1 and R-2**.
3. **Foreign Investments:-** As per Shareholding details of the Transferor Company 1, M/s. Aeroports De Paris (ADP), a foreign company having 36,95,96,829 Shares, holding 23.59% shareholding of total Equity issued. After Part C of the Scheme become effective, M/s. Aeroports De Paris (ADP) will receive total 5,88,32,42,308 equity share in Transferor Company 2.

Further, after the Part D of the Scheme become effective, M/s. ADP, as a shareholder in the Transferor Company 2, shall be entitled to receive 3,15,30,31,945 equity shares, having a face value of INR 1/-, issued by the Transferee Company. Accordingly, Transferor Company 2 and Transferee Company are required to comply with FEMA Regulation.

- 4. Auditors Qualified Opinion:-** The Auditors of the Transferor Company 1 observed the following material weakness in the operating effectiveness of the Company's internal financial controls with reference to financial statements as at 31 March 2023.

"The company's internal financial controls over fair value measurement of its liability relating to Bonus Compulsory convertible Preference Shares Series A, Series B, Series C and Series D (hereinafter together referred as "Bonus CCPS"), as fully explained in note No.49 to the standalone financial statements were not operating effectively, which has resulted in such Bonus CCPS not being measured at their fair value in accordance with the applicable accounting standards, and its consequential impact on the accompanying standalone financial statements."

5. As per the Auditors Report of Transferor Company No.2 i.e. GMR Infra Developers Limited as on 31.03.2023 the Auditors have pointed out that:-
- (a) *During the year, the company has provided loans in the nature of loans. The aggregate amount during the year i.e. Rs.12,240/- Lacs and the balance outstanding at the Balance Sheet with respect to such loans & Advances & guarantee or security to parties other than subsidiaries, joint venture and associates is Rs.46,242.42 Lacs.*
- (b) *Company has incurred cash losses Rs.24,309.18 Lacs in the financial year & Rs.20,580.87 Lacs in the immediately preceding financial year.*

PRAYER:

In view of the submissions made in proceeding paras of this report and the observations of the Independent Auditor mentioned as per the audit reports, the Office of the Official Liquidator most respectfully prays that the matter may kindly be decided on merits by this Hon'ble Tribunal.

PLACE: -CHANDIGARH
DATED: 15/04/2024


(ANUPAM VASHISTA)
OFFICIAL LIQUIDATOR

19. The Petitioner Companies vide Diary No. 03987/9 on 08.05.2024 filed their reply to the above said observations of OL making the following submissions:

3. That at paragraph 14(1) of the OL Report, the Official Liquidator has sought compliance to the regulations and provisions of the Reserve Bank of India Act, 1934. In this regard, it is submitted that the Petitioner/Transferor Company 1 is in compliance of applicable rules and regulations as issued by the Reserve Bank of India (“RBI”) under the aforestated Act. It is further submitted that the RBI has on 10th July, 2023 issued a communication, conveying it’s no objection to the Scheme. The Petitioner/Transferor Company 1 by letter dated 7th August, 2023, has informed the RBI, compliance of the terms and conditions set out at ANNEXURE “A” of the RBI letter dated 10th July, 2023. Copy of the aforestated communications are annexed hereto collectively and marked as ANNEXURE “B”. As a matter of fact, the no objection to the Scheme by the RBI has also been acknowledged by, in the OL Report.
4.
 - (a) The Official Liquidator at paragraph 14(2) of the OL Report refers to certain litigation and tax litigation matters pending against the Petitioner/Transferor Company 1 and Petitioner/Transferor Company 2. In this regard, it is submitted that in terms of Clause 5.2.8 of Part C and Clause 9.2.8 of Part D of the Scheme, all pending legal proceedings as regards the Petitioner/ Transferor Company 1 and Petitioner/Transferor

Company 2 shall be continued by or against the Petitioner/Transferee Company.

- (b) It is further submitted that in so far as the Income Tax/ Indirect Tax proceedings as referred to by the Official Liquidator at ANNEXURE “R-1” and ANNEXURE “R-2” of the OL Report, the Petitioner/Transferee Company undertakes that it shall, subject to exercise of available appellate remedies, make payment of the demand(s) raised upon final order being passed in the concerned proceedings. Clause 5.2.7 and 9.2.7 of the Scheme specifically provides that all taxes, duties, interest, cess, etc. payable by or refundable to the Petitioner /Transferor Company 1 and Petitioner /Transferor Company 2, shall be treated as taxes payable by / refundable to the Petitioner /
Go
Transferee Company.
- (c) It is respectfully submitted that the pendency of these litigations do not have a material bearing to the issue and aspect of sanction of the Scheme by this Hon’ble Tribunal.
6. The Official Liquidator at paragraph 14(3) of the OL Report, has sought compliance by the Petitioner/Transferor Company 2 and the Petitioner/Transferee Company with regulations issued under the Foreign Exchange Management Act, 1999 (“FEMA”) for issuance of equity shares to Aeroports De Paris (“ADP”). In this regard, the Petitioner/Transferor
Activate Win
Go
Company 2

and the Transferee Company undertakes to comply with applicable regulations issued under the FEMA for the issuance of equity shares to ADP.

However, by way of factual correction, it may be noted that ADP is holding 353,783,144 (25.15%) equity shares of Transferor Company 1 as against 369,596,829 (23.59%) equity shares mentioned in paragraph 14(3) "Foreign Investments" of the OL Report.

7. The Official Liquidator at paragraph 14(4) of the OL Report has drawn reference to the opinion issued by the auditor of the Petitioner/Transferor Company 1 as regards the issuance by way of bonus of compulsorily convertible preference shares (Bonus CCPS). It is submitted that this opinion does not have any material bearing to the issue of sanction of the Scheme by this Hon'ble Tribunal. In fact, the auditor has stated that the accounts of the Petitioner/ Transferor Company 1 give a true and fair view of the accounts and which are in conformity with applicable Indian Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

It may further be noted, that the Board of Directors in its report to the Shareholders dated 11th August, 2023 had responded to the above referred observation of the auditors and informed that:

“Quote

These Bonus CCPS are currently recorded at the face value and not at fair value in accordance with Ind AS 109 ‘Financial Instruments’. The difference between the fair value and face value being notional in nature, amounting to Rs. 497.34 Crore does not impact the “Other Equity”. Considering the terms of Unquote”

Further, it may also be noted that the said Bonus CCPS in terms of the Scheme would get converted into equity shares prior to the effective date of the Scheme and as such would have no impact or bearing on the implementation of the Scheme.

8. The Official Liquidator at paragraph 14(5) of the OL Report has as a matter of fact, reproduced from the audited accounts of the Petitioner/Transferor Company 2, the position as regards loans and advances given by the Petitioner/Transferor Company 2 and the loss incurred by the Petitioner/Transferor Company 2. It is submitted that these are matters set out in the audited accounts for the financial year ended 31st March, 2023 and accordingly, do not call for any response. It is however submitted that upon Scheme becoming effective, the Petitioner/

Transferee Company shall account for the carry forward of losses in accordance with applicable law and subject to the compliance of the conditions as set out in Section 72A of the Income Tax Act, 1961. In any case, these comments in the auditor report do not have a material bearing to the issue and aspect of sanction of the Scheme by this Hon'ble Tribunal.

9. It is submitted that pursuant to the publication of the notice of hearing on 23rd April, 2024 in the newspapers, FINANCIAL EXPRESS (English Edition) and JAN SATTA (Hindi Edition), no notice of objection to the Scheme has been received either by the counsel for the Petitioner Companies or either of the Petitioner Companies.

20. After examining reply filed by the Petitioner Companies, and in compliance with the directions of this Tribunal vide order dated 13.05.2024, OL filed its Additional Report vide Diary No. 03897/15 on 21.05.2024 concluding the following:

4. That after considering the reply of the Petitioners Companies, it is stated that the Official Liquidator is satisfied with the reply & this office has no further observation in this regard.

PRAYER:

In view of the submissions made in proceeding paras of this report the Office of the Official Liquidator most respectfully prays that the matter may kindly be decided on merits by this Hon'ble Tribunal.

21. During the course of hearing on 10.05.2024, the Ld. Counsel for the Official Liquidator stated that they have found the replies of the Petitioner Companies satisfactory and therefore, OL has no objection to the Scheme. It is further substantiated by the Additional Report filed vide affidavit dated 21.05.2024 by OL stating that "after considering the reply of the Petitioner Companies, it is stated that the Official Liquidator is satisfied with the Reply & this Office has no further observation in this regard." Thus, it is understood that the OL has no objection to the Scheme.



22. Further, in compliance with the order dated 10.05.2024, the Petitioner Companies have filed further Affidavits vide Diary No. 03987/13/A, 03987/13/B, 03987/13/C on 13.05.2024 stating the following:

22.1 With regards to Transferor Company 1, It is stated that the Transferor Company 1 could carry out the business of operating airports, but is not an Airport Operator as defined under the Airports Economic Regulatory Authority of India Guidelines, 2011. It was also stated that the Transferor did not require any specific license or approval by any governmental/Regulatory Authority to authorize the company to undertake such other airport operation related activities. The Transferor Company 1 also submitted that the BSE has given its no objection to the filing of the Scheme vide its letter dated 01.08.2023. The said letter states that the Companies shall ensure that the Scheme filed before this Tribunal is not modified. The Petitioner Companies have averred that they have not modified the Scheme in any manner.

22.2 With regard to Transferor Company 2, it has been stated through its affidavit, that neither does the company have any object vis a vis operation of airports in its Memorandum of Association nor does it fall under the definition of Airport Operator as defined the Airports Economic Regulatory Authority of India (Terms and Conditions for determination of Tariff for Airports Operators) Guidelines, 2011. The Transferor Company 2 does not undertake any business activity ancillary to airport operations for which any specific license is required to be granted by any government authority.

22.3 With regards to the Transferee Company, it is submitted that the BSE and NSE have given their no objection to the filing of the Scheme vide their letters dated 01.08.2023 and 02.08.2023, respectively, subject to the condition that Companies shall ensure that the Scheme filed before this Tribunal is not modified. The Petitioner Companies have averred that they have not modified the Scheme in any manner.

23. Furthermore, from the record, it is seen that the Petitioner Companies in Volume VII of their application have filed the letter of RBI dated 10.07.2023 (page 1094) conveying their NOC to the proposed Scheme of Amalgamation and Arrangement to be entered, involving the company GMR Infra Developers Limited (GIDL) and GMR Airports Infrastructure Ltd. (GIL). The said letter is reproduced below for immediate reference:

 भारतीय रिज़र्व बैंक Reserve Bank of India www.rbi.org.in		1094 ANNEXURE P.33
स्पीड पोस्ट से प.वि.नदि.सं.S355 / एनडी-एसआई/05.08.000/2023-24		10 जुलाई 2023
The Managing Director GMR Airports Limited BCCL Times Internet Building Second floor, Plot No 391 Udyog Vihar, Phase-III Gurugram, Haryana - 122016		
महोदय, <u>No Objection Certificate in respect of the proposed Composite Scheme of Amalgamation and Arrangement to be entered involving the company, GMR Infra Developers Ltd (GIDL) and GMR Airports Infrastructure Ltd (GIL)</u>		
कृपया उपर्युक्त विषय पर अपने दिनांक 10 May 2023 आवेदन का संदर्भ लें। इस विषय में सूचित किया जाता है कि GMR Infra Developers Ltd (GIDL) and GMR Airports Infrastructure Ltd (GIL) का आपकी कंपनी के साथ प्रस्तावित विलय पर बैंक को कोई आपत्ति नहीं है। 2. आपको यह सलाह दी जाती है कि अनुलग्नक में दिये गए नियमों और शर्तों का अनुपालन सुनिश्चित करें। 3. कृपया पावती भेजें।	Please refer to your application dated May 10, 2023 on the captioned subject. In this connection, we advise that the Bank does not have any objection to the proposed scheme of amalgamation and arrangement to be entered involving the company, GMR Infra Developers Ltd (GIDL) and GMR Airports Infrastructure Ltd (GIL). 2. You are advised to ensure compliances of the terms and conditions as per the Annex. 3. Please acknowledge receipt.	
भवदीया  (गीता) सहायक महाप्रबन्धक संलग्नक: उपरोक्त		
<small>परीक्षण विभाग, 6, सेंट जॉर्ज रोड दिल्ली 110 001 कॉम - 2375 4456, 2345 2429 9-444 - 011-2375 2185 ईमेल: dnbsnewdelhi@rbi.org.in Department of Supervision, 6, Strand Marg, New Delhi-110 001 Phone - 2371 4456, 2345 2429 Fax - 011-2375 2188 e-mail: dnbsnewdelhi@rbi.org.in</small>		

24. Given the foregoing facts and discussion and upon considering the approval accorded by the Shareholders and Creditors of the Petitioner Companies to the proposed Scheme and no sustainable objections having been raised by the Regional Director (North), Income Tax Department, and Official Liquidator, RBI or any other interested party, there does not appear to be any impediment in granting sanction to the proposed Scheme. **Accordingly, the sanction is hereby accorded to the Scheme of Amalgamation proposed by the Petitioner Companies under Section 230 to 232 of the Companies Act, 2013.** The sanctioned Scheme of Amalgamation shall be binding on the Transferor Companies as well as the Transferee Company (together, the Petitioner Companies), and their Shareholders and Creditors subject to the Petitioner Companies complying with the requirement of various laws including the rules, and regulations. The Petitioner Companies shall remain bound to comply with all the statutory requirements in accordance with law.

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

26. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes, or other statutory dues if any, and payment in accordance with law or in respect to any permission/compliance with any

other requirement, which may be specifically required under any law. Further, the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961, or serve as any exemption or defense for the Petitioner Companies against tax treatment in accordance with the provisions of the Income Tax Act, 1961 and the rules and regulations made there under.

27. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Petitioner Companies that:

(i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 01.04.2023, the Transferor Companies shall stand dissolved without undergoing the process of winding up.

(ii) All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Companies are entitled to under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax, and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/ deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives, and concessions;

(iii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full

force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;

(iv) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(v) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as of the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations, etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company as if it had incurred such liabilities.

(vi) All proceedings including criminal proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.

(vii) The Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of both the Transferor Companies from the Transferee company. With regards to the issue of tax neutrality, as undertaken by the Petitioner Companies, they will be liable to pay the tax demands, when the same becomes due for payment and upon the final order being passed and the sanction of the Scheme by this Tribunal shall not in any manner prejudice the rights of the Income Tax Department to examine the tax implications/neutrality arising from the implementation of the Scheme.

(viii) The Transferee Company will clear all the pending statutory dues of Statutory Authorities after exercising all Appellate jurisdiction and as per final orders. The scheme shall not come in the way of the statutory authorities to recover any of their dues. All the contentions of the parties shall remain open before the relevant fora, where disputes are pending.

(ix) The Transferee Company shall comply with all the provisions of FEMA, the rules and regulations thereunder, prior to issuance of equity shares to AEROPORTS DE PARIS S.A. (ADP).

(x) The Petitioner Companies shall comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.

(xi) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

28. The Petitioner Companies, within thirty days of the date of the receipt of this Order, shall cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the Transferor Company shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to both the Petitioner Companies shall be consolidated accordingly.

29. **The present Company Petition is Allowed in the aforesaid terms.**

Sd/-

**(L. N. GUPTA)
MEMBER (T)**

Sd/-

**(HARNAM SINGH THAKUR)
MEMBER (J)**