IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI

CP (CAA)/734/MB.V/2020
Connected with
CA (CAA)/142/MB.V/2020

In the matter of
The Companies Act, 2013
and
In the matter of
Section 230 to 232 and other relevant provisions of the Companies Act, 2013
and
In the matter of
Scheme of Merger by absorption
of
Vigi Medsafe Private Limited
(Transferor Company)
with
PPD Pharmaceutical Development India Private Limited
(Transferee Company)
and their respective shareholders

Vigi Medsafe Private Limited — Petitioner No.1/
CIN: U85110MH2013PTC335392 … Transferor Company

PPD Pharmaceutical Development India Private Limited — Petitioner No.2/
CIN: U73100MH2004PTC144454 … Transferee Company

Order pronounced on 11August, 2020

Coram:

Mr Rajasekhar V.K. : Member (Judicial)

Mr V. Nallasenapathy : Member (Technical)

Appearances (via video conferencing):

For the Petitioners	:	Mr. Hemant Sethi, i/b Hemant Sethi & Co., Advocates a/w Ms Bikkina Manju, Statutory Auditor of the Transferor Company and Ms Vandana Ahuja, Process Advisors to the Petitioner Company.
For the Regional Director (WR)	:	Ms Rupa Sutar, Deputy Director.
For the Official Liquidator (OL)	:	Mr VP Katkar, OL in person a/w CA Ashok Solanki, Chartered Accountant appointed to assist the OL.

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.

2. The sanction of the Tribunal is sought under sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the said Scheme of Amalgamation of Vigi Medsafe Private Limited *(Transferor Company)* with PPD Pharmaceutical Development India Private Limited *(Transferee Company)* and their respective shareholders.

3. Learned Counsel for the Petitioners states that the First Petitioner Company is engaged in the business of providing consultancy and expert advisory services in setting up and running of pharmaceutical companies and their allied services in India and abroad. The Second Petitioner Company is engaged in business of providing drug development services including clinical trials monitoring services and to undertake research and development in drugs and pharmaceutical products.

4. Learned Counsel for the Petitioners submits that the proposed Scheme Amalgamation would *inter alia* have the following benefits:

   a. Simplification of group structure by eliminating layers structure of companies in the similar business;

   b. It will prevent duplication of expenses and overlapping of administrative responsibilities with respect to records, legal and regulatory compliances generally involved with running two separate legal entities;

   c. Deriving synergies in the operation, administration, supply chain management, resource planning, productivity and optimal utilisation of existing resources;

   d. Greater efficiency in cash management and access to cash flow generated by the combined business which can be deployed more efficiently to maximise shareholder value;

   e. Enables management to fully leverage assets, capabilities, experience, expertise and infrastructure of both the companies; and

   f. Amalgamation would result in the cost savings for both the companies, thereby resulting in increased shareholder value.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions dated December 18, 2019, which are annexed to the Joint Company Petition.

6. Learned Counsel appearing on behalf of the Petitioner Companies states that the Joint Company Petition have been filed in consonance with the Order dated 17.01.2020 passed in their Joint Company Application bearing CA(CAA)/142/MB.V/2020of this Tribunal.

7. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Bench and they have filed necessary affidavits of compliance in this regard.

8. The Regional Director has filed its Report on May28,2020,*inter alia*stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraph IV, of the said Report read as follows:

   a. *In compliance of AS-14 (IND AS-I03), the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc.*

   b. *As per the Definition of the Scheme,*

      "Appointed Date" means 1st April, 2019 or such other date as may be fixed or approved by the National Company Law Tribunal or such other competent authority

      "Effective Date" means the last of the dates on all conditions, matters and filings referred to in Clause 17 hereof have been fulfilled or waived and necessary orders, approvals and consents referred to therein have been

obtained. All references in this Scheme to the date of "coming into effect of this Scheme" or "upon the Scheme becoming effective" shall mean Effective Date.

In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that 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. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

Further, the Petitioners may be asked to comply with the requirements as clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

c. *Petitioner Company have to undertake to comply with section 232(3)(i) of 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 on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*

d. *The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*

e. *Since, the Transferee Company is a Subsidiary of a UK based Foreign Company, the FEMA regulations/ RBI guidelines if any applicable is to be complied with by the Petitioner Companies.*

f. *The petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities is binding on the Petitioner Company(s)*

9. In response to the observations made by the Regional Director, (Western Region), Ministry of Corporate Affairs, Mumbai, the Petitioner Companies state as under:

   a. *So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies submit that the Petitioner Companies shall pass such accounting entries which are necessary in connection with the Scheme to comply with applicable Accounting Standards.*

   b. *So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies through their Counsel hereby confirm that the appointed date mentioned in the Scheme is 1st April, 2019. In this regard, the Petitioner Companies confirm and undertake that upon the Hon'ble National Company Law Tribunal, Mumbai Bench approving the Scheme, the Scheme shall take effect from the Appointed Date i.e. 1st April, 2019 in terms of provisions of Section 232(6) of the Companies Act, 2013. Further, the Petitioner Companies through their counsel undertake to comply with the provisions and requirements clarified by circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs, if required.*

   c. *In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel undertake to comply with provisions of section 232(3)(i) of the Companies Act, 2013 as regards combination of Authorised Share Capital.*

   d. *In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies state the meeting of the shareholders and creditors of the Petitioner Companies were dispensed with in view of the affidavits of consent obtained from all the Equity shareholders of First Petitioner Company and in view of the fact that the merger is between wholly owned subsidiary with the holding company the meetings of the equity shareholders and creditors of the Second Applicant Company is hereby dispensed with vide order dated*

17th January, 2020 passed by this Tribunal in CA(CAA)/142/MB.V/2020.

e. *In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel hereby undertake to comply with the applicable FEMA regulations/RBI Guidelines (if any).*

f. *In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies have served/undertake to serve notices upon the concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the Scheme by the Hon'ble Tribunal will not deter such authorities to deal with any of the issues arising by giving effect to the scheme. The decision of such authorities will be binding on the Petitioner Companies and all issues arising out of the Scheme will be met and answered in accordance with law.*

10. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 10 above. The clarifications given by the Petitioner Companies are accepted by this Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

11. The Official Liquidator, High Court, Bombay, has filed his report dated 23 June, 2020, *inter alia*stating therein that save and except as stated in paragraph 12.8 of the report dated 11 June, 2020 and as stated in supplementary report dated 22 June, 2020 of the Chartered Accountant, the affairs of the Transferor Company have been conducted in a proper manner, not prejudicial to the interest of the

shareholders of the Transferor Company and the Transferor Company may be ordered to be dissolved without winding up by the Tribunal.

12. In paragraph 12.8 of the said report, it is stated that:-

i. During the year ending 31.3.2019, TDS reimbursable to the company of ₹98,23,500 is debited to Profit & Loss Account and provided as amount payable to the erstwhile promoter director of the company. The same was disclosed in Audited Annual Accounts for year ended 31.3.2019. As per the Scheme of Amalgamation, Clause No.4.3 and Clause No.19, all Income tax refund receivable, Tax Deducted at Source shall be transferred to, or to be deemed to be transferred to the Transferee Company. This TDS debited to the Profit and Loss a/c and credited to the erstwhile directors of the company is against the Scheme of Amalgamation. As the same is not a business expenses and as it is not allowable to the company and hence the same was disallowed by the Company in the Computation of Total Income for AY2019-20. According to us the erstwhile directors have derived undue benefit from such a transaction.

ii. The Company has incurred various expenses of ₹2,72,72,500 being expenses in relation to Share Transfer stated in Clause 12.5 above. It should have been incurred by the erstwhile directors of the company for valuation of their shares, transfer of shares, in identifying intending purchaser of shares. So according to us, the erstwhile directors of the company have derived undue benefit from such transaction directly or indirectly which is expensed out in the profit &loss a/c for the year ended 31.03.2019 and the same is disallowed while doing computation of the total income and Income tax return filed by the company. As it clearly indicates it is not a business expense and the erstwhile directors of the company derived undue benefits from such transactions which is incurred by the company.

13. Further in the supplementary report dated 22 June, 2020, it is stated that:

"The Directors of Vigi Medsafe Private Limited has paid the following professional fees for the valuation of the shares of the company, identifying intending buyer for transfer of existing shares of the company and other legal compliance for transfer of shares of the company. The details of such expenses are as given below:

Name of the Party	Amount (₹)	Nature of Expenses
Biostec Consulting Services	1,18,00,000	Charges towards providing professional and business consulting services.
R & Associates	1,47,500	Towards secretarial and FEMA compliances as per share purchase agreement for transfer of shares from Resident seller to Non-resident buyer.
Sharp & Tannan Associates Advisors Private Limited	1,32,75,000	Professional services in identifying investors in preparation of summary financials of the Company with presentation to potentialinvestors including preparing Teaser and other info material, in negotiations and finalising deal structure inconcluding documentation including share transfer agreement and other documents with the finalised investor.
Sumedha Venture Advisors Private Limited	17,70,000	Payment for Advisory Services for transfer of shares.
Tempus Law Associates	2,80,000	ProfessionalFees forsharepurchase transaction.
Total	2,72,72,500	

The company has debited these expenses to Profit and Loss Account which was incurred towards valuation of Company shares, identifying intending buyer of existing shares of the Company by transfer of shares, change in ownership of the Company for and on behalf of seller of shares. All these expenses were required to be paid by the seller of shares of the Company i.e. erstwhile Directors of the Company in their individual capacity. These expenses are personal expenses and non-business expenses debited to Profit and Loss Account and disallowed under Income Tax Act, 1961.

The said Company also debited TDS payable to VIGI Medsafe Private Limited of ₹98,23,500. During the year ending 31.3.2019, TDS reimbursable to the company of ₹98,23,500 is debited to Profit & Loss Ale and provided as amount payable to the erstwhile promoter director of the company by way of book entry. The same is disallowed by the Company in the Computation of Total Income and Income tax Return filed by the Company for AY 2019-20 clearly indicates that these expenses are not Business expenses of the Company.

By debiting such expenses, the losses of the company were increased to the tune of ₹3,70,96,000/- (Share Transfer expenses ₹2,72,72,500/- and TDS Refundable to Company ₹98,23,500/-). It is the duty of the Company Auditors U/s 143(1)(e) of the Companies Act, 2013 to qualify the Audit Report if such personal expenses are debited to Profit and Loss Account which is in non-compliance with the provisions of the Companies Act, 2013.

As per the Scheme of Amalgamation, Clause No.4.3 and Clause No.19, all Income tax refund receivable, Tax Deducted at Source shall be transferred to, or tobe deemed to be transferred to the transferee Company. This TDS debited to the Profit and Loss ale and credited to the erstwhile directors of the company is against the Scheme of Amalgamation. It is stated in the reply to our report that TDS refundable to the Company of ₹98,23,500/- is provided as payable to erstwhile Directors of the Company was as per Clause 2.2 of Schedule 3 of Share purchase Agreement. The Share purchase Agreement is between buyer and seller of shares for consideration to be settled by them for sale of shares interse. The

same cannot be debited to Profit and Loss Account of the Company thereby reducing profit/increasing loss of the Company. Such a clause mentioned in the Share Purchase Agreement between the Buyer and the seller is prejudicial to the interest of the company. As the company is a separate legal entity, any tax refunds available to the Company belongs to the company and not to the sellers (as mentioned in the aforesaid clause). Also,seller sale of shares expenses cannot be debited to Profit and Loss account of the Company.

As per our observation for TDS Refundable to the company of ₹98,23,500/- and the Shares Transfer expenses of ₹2,72,72,500/- incurred by the erstwhile management of the company be treated as misapplication of the fund of the Company as noticed by us during the course of scrutiny of the books of accounts. Hence such expenses incurred by the Company are prejudicial to the interest of Company and its members. So according to us, the erstwhile directors of the company have derived undue benefit from such transaction directly or indirectly which is expensed out in the Profit and loss a/c for the year ended 31.03.2019.

Hence based on our report, the Official Liquidator to frame their opinion considering the factual position enumerated above while filing the representation to the National Company law Tribunal under section 230(5) of the Companies Act ,2013 for the Scheme of Amalgamation of Vigi Medsafe Private Limited with PPD Pharmaceuticals Development India Private Limited and their respective shareholders.

14. As far as the first observation made by the Official Liquidator is concerned, the Petitioner Companies submit as under:

i. The Transferor Company was also party to Share Purchase Agreement (SPA) and therefore it has taken up the obligation to pay proportionate TDS (i.e. upto 23rd January 2019) to the erstwhile directors. This decision was commercial in nature and in the best interest of the transaction.

ii. The Transferor Company was a hundred percent promoter owned company and hence such TDS refund would have ultimately inured to

the benefit of the erstwhile directors/promoters only as there were no outside shareholders.

iii. *The said expense had already been disallowed by the Transferor Company while filing its Income Tax Return of FY19. The same is also stated by the Official Liquidator auditor in his report. Hence, no undue tax benefit or advantage was taken by Transferor Company by debiting such expense in the books of accounts.*

iv. *Pursuant to merger, all the assets and liabilities of Transferor Company shall be subsumed by Transferee Company in accordance with the Pooling of interest method of AS-14 as mentioned in Clause 6 of the Scheme. Accordingly, the said liability (i.e. TDS payable to erstwhile directors) will be paid by Transferee Company once the merger is effective. Accordingly, there would be no misapplication, misappropriation and breach of trust on the part of the management of the Transferor / Transferee Company.*

v. *This issue had not been qualified by the statutory auditors of the Transferor Company in their audit report for the FY 2018-19.*

vi. *There was no intent of the erstwhile directors to deceive or gain undue advantage, or to injure the interests of the Transferor Company or its shareholders or its creditors or any other person by claiming such proportionate TDS refund.TDS refund appearing as payable to the erstwhile directors could not be said to be misapplication or misappropriation of funds of the Company or breach of trust on part of management under the Companies Act.*

vii. *Additionally, learned counsel for the Petitioner Companies has relied on following judicial precedents:*

a. In the case of Official Liquidator, Aryodaya Ginning & Mfg. Mills Ltd vs Gulabchand Chandalia (2003) 114 Comp Case 654 (Guj), it was held by Gujarat High Court that mere mistakes or error in adopting accounting practices cannot amount to misfeasance unless it results in any loss to company or any undue gain to directors or to other persons.

b. *In the case of Shamdasani, re, (1929) 31 Bom LR 1144(Bom), it was held that where the points involved were really technical matters of correct or incorrect accounting, they do not normally fall within a criminal charge under this section, at any rate where no dishonesty or motive for dishonesty is shown, and where in certain particulars the directors have acted on the advice of counsel.*

c. *In the case of Chamundi Chemicals and Fertilisers Ltd. (77 Comp. Cas. 1), it was held by Karnataka High Court held that when the decisions were taken by the board of directors of the company in the interest of the company and there was no charge that the directors misappropriated the sums in question for personal benefit, then they were not liable for any misfeasance or misappropriation or breach of trust.*

d. *In the case of V. Selvaraj [2011] (106 SCL 56), it was held by Madras High Court that in order to prove an allegation relating to fraud or breach of trust or misappropriation, it is necessary that there should be mensrea aspect on part of ex-director either in committing fraud or causing loss to company under liquidation. Similar analogy was followed also by Madras High Court in the case of L.G. Varadarajulu (25 taxmann.com 348).*

e. *In the case of Bhadreshwar Vidyut (P.) Ltd. vs Turbo Aviation (P.) Ltd. (116 taxmann.com 442), it was held by the NCLT (Delhi Bench) that without circumstances suggesting that business of company was being conducted in a fraudulent manner with intent to defraud creditors, investigation into affairs of said company only on basis of irregularities in financial statements, could not have been ordered.*

f. *In the case of B Monappa v. RS Ramappa [AIR 1966 Mad 184 [LNIND 1965 MAD 111], at p.188] it was held that whenever fraud was alleged, at least two elements were essential: firstly, deceit or intention to deceive or in some cases a mere secrecy; and secondly, either actual injury or possible injury or intention to expose some*

person either to actual injury or to the risk of possible injury by means of deceit or secrecy.

viii. *Learned counsel for the Petitioner Companies has relied on following judicial precedents wherein it was held that expenses shall be allowed even when the expenses incurred were not a legal obligation but due to commercial decision taken in the best interests of the Company:*

a. *In the case of Sassoon J. David (1 Taxman 485) (SC) it was held that it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee is entitled to deduction even though there was no compelling necessity to incur such expenditure.*

b. *In the case of Associated Electrical Agencies 135 Taxmann 12 (Madras High Court) it was held that if an assessee, who carries on a business finds that it is commercially expedient to incur certain expenditure directly or indirectly, it would be open to such an assessee to do so notwithstanding the fact that a formal deed does not precede the incurring of such expenditure*

c. *In the case of Symonds Distributors (P.) Ltd. 108 ITR 947 (ALL.) (Allahabad High Court) it was held that it was true that the expenditure was incurred voluntarily and not under any compulsion except the compulsion of commercial expediency. It was clear from the facts that the sole purpose for which the assessee incurred the expenditure in question was to save a part of its own business by helping the manufacturing company out of the difficulty. When the assessee agreed to bear a part of the expenditure of the manufacturing company, it did so out of commercial expediency. The fact that the expenditure in question incurred to the benefit of a third party was of no consequence.*

15. As far as the second observation made by the Chartered Accountant is concerned, the Petitioner Companies submit and clarify as under:

i. *The said expenses (i.e. professional consultancy fees in relation to the transfer of shares of the company) had already been disallowed by the Transferor Company while filing its Income Tax Return of FY19. The same is also stated by the Official Liquidator in his report. Hence, no undue tax benefit or advantage was availed by Transferor Company or its erstwhile directors by debiting such expenses in the books of accounts. Further, the Transferor Company had withheld appropriate taxes on such payments and deposited within the stipulated time limit to government authorities. Additionally, learned counsel for the Petitioner Companies has relied on judicial precedents as stated in paragraph 15(vii).*

ii. *Such share transfer expenses were incurred by the Transferor Company, as a commercial decision taken in the best interest of company, which was to get better shareholders for the Company with better financial capabilities.*

iii. *This issue had not been qualified by the statutory auditors of the Transferor Company in their audit report.*

iv. *The shareholders have considered and unanimously approved the audited financials in their annual general meeting dt. 23 September 2019. Hence, no undue tax benefit or advantage was taken by Transferor Company or its erstwhile directors by debiting such expense in the books of accounts.*

v. *There was no intent to deceive or gain undue advantage, or to injure the interests of the company or its shareholders or its creditors or any other person by debiting such share transfer expenses in the books of Transferor Company. Thus, the same cannot be said to be misapplication or misappropriation of funds of the Company or breach of trust on part of management under the Companies Act. Additionally, learned counsel for the Petitioner Companies has relied on judicial precedents as stated in Sr no 14(vi).*

vi. Transferee Company held 100% of the shares of Transferor Company since January 2019. Further, the Transferor Company is proposed to merge into the Transferee Company with effect from April 1, 2019 (appointed date). Hence, it would not make a difference whether the expenses are booked in the books of Transferor Company or Transferee Company considering Transferor Company is wholly owned subsidiary of Transferee Company.

16. The two issues flagged by the chartered accountant appointed to scrutinise the books of the Transferor Company are –

(1) TDS reimbursable to the company of ₹98,23,500 is debited to Profit & Loss Account and provided as amount payable to the erstwhile promoter director of the company; and

(2) That the professional consultancy fees in relation to the transfer of shares of the company has been incorrectly debited to the profit & loss account when it should have been accounted for by the sellers.

17. As far as the first issue is concerned, this Bench feels that it is only a question of accounting for the same under the wrong head of account. Mere mistakes in accounting practices would not be enough to scuttle sanction of the Scheme.

18. There is support to be had for this view in the judgments of the Hon'ble Gujarat High Court in *Official Liquidator, Aryodaya Ginning and Manufacturing Mills Ltd v. Gulabchand Chandalia,*[1]which held that *"mere mistakes or error in adopting accounting practices cannot amount to misfeasance unless it resulted in any loss to the company or any undue gain*

[1]CP No.157/1985 c/w CA No.261/1994 decided on 07.02.2002
[(2003) 114 Comp Cas 654Guj) : (2003)4GLR276]

to the directors or to other persons." There is no allegation that there was fraudulent conduct of business. Further, the statutory auditors have not qualified their report for the relevant time. Learned Counsel for the Petitioner Companies submits that in any case, the petitioner companies have stated that the said expense has been disallowed by the Transferor Company while filing its Income Tax return for the Financial Year 2018-19.

19. As far as the second issue is concerned, *i.e.,* payment of professional consultancy fee in relation to transfer of shares of the company, Learned Counsel for the petitioners submits that it ought to be left to the commercial wisdom of the Board of Directors of the company. Further, the shareholders of the company have also considered and unanimously approved the audited financial statements at their AGM held on 23.09.2019. There was no undue tax benefit or advantage of any kind either to the Transferor Company or to its erstwhile directors.

20. After hearing the Learned Counsel for the Petitioner Companies, the statutory auditors of the Transferor Company, the chartered accountant appointed to assist the Official Liquidator, and the Official Liquidator himself, this Bench accepts the explanation proferred in this regard that it was a commercial decision taken in the best interest of the company. The judgment of the Hon'ble Supreme Court in *Sassoon J. David& Co (P) Ltd v CIT, Bombay,*[2] lays down the ratio that ordinarily it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without

[2]AIR 1979 SC 1441 : 1979 SCR (3) 878, decided on 03.05.1979

any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under the section even though there was no compelling necessity to incur such expenditure. Though that was a case under the Income Tax Act, we do not see any reason why the same logic cannot be applied here.

21. Further, it is a matter of commercial expediency to incur such expenses as a businessperson would consider prudent for the purposes of business, even if such expense may not be a legal obligation. This *ipso facto* would not be enough to reject the Scheme, unless it can be shown that such expenditure is fraudulent in nature or for similar reasons. It is also not the Official Liquidator's case that there is any fraudulent conduct of business or that the affairs of the Transferor Company have been carried out in a manner prejudicial to the public interest. Therefore, we accept the arguments advanced by the learned Counsel for the Petitioner Companies. However, we leave it to the authorities concerned to see if there has been any violation of accounting standards or other provisions of law, and to take action as may be deemed appropriate under the law. The sanction of the Scheme shall not stand in the way of any action to which the Petitioner Companies may be liable to in accordance with law.

22. From the material on record, the Scheme appears to be fair and reasonable and is not violative to any provisions of law nor is contrary to public interest.

23. Since all the requisite statutory compliances have been fulfilled, CP(CAA)/734/MB.V/2020has been made absolute in terms of prayer of the petition mentioned therein.

24. The Scheme is hereby sanctioned, and the Appointed Date of the Scheme is fixed as 1st April 2019. The Transferor Company be dissolved without winding up.

25. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in Form INC-28 within thirty days from the date of receipt of the Order duly certified by the Deputy/Assistant Registrar of this Tribunal.

26. The Petitioner Companies are directed to lodge a copy of this order duly certified by the Deputy/Assistant Registrar of this Tribunal, along with the Scheme with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within sixty working days from the date of the receipt of the certified copy of the Order.

27. All concerned regulatory authorities to act on a copy of this order duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal, along with the Scheme.

28. Ordered accordingly. Pronounced in open court today (11.08.2020). File be consigned to the record.

Sd/- Sd/-

V. Nallasenapathy
Member (Technical)

Rajasekhar V.K.
Member (Judicial)