IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
Company Scheme Application No. 243 of 2017

In the matter of the Companies Act, 2013 (1 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

And

In the matter of composite Scheme of Amalgamation of between Windermere Properties Pvt. Ltd., Haddock Properties Pvt. Ltd., Grandeur Properties Pvt. Ltd. and Winchester Properties Pvt. Ltd. and Pentagram Properties Pvt. Ltd. ("Transferor Companies") with Housing Development Finance Corporation Ltd. ("Transferee Company") and their respective Shareholders and Creditors

Housing Development Finance Corporation Ltd.)	.... Applicant/ Transferee Company
Windermere Properties Pvt. Ltd.)	
Haddock Properties Pvt. Ltd.)	
Grandeur Properties Pvt. Ltd.)	
Winchester Properties Pvt. Ltd.)	
Pentagram Properties Pvt. Ltd.)	...Transferor Companies

Order delivered on: 04.09.2017

Coram: Hon'ble Mr. **B. S. V. Prakash Kumar**, Member (J)
Hon'ble Mr. **V. Nallasenapathy**, Member (T)

Applicants' Counsel: Shri. Darius J. Khambata, a/w. Mr. Krishna Dutt, Mr. Pheroze Mehta, Mr. Swapnil Gupte, Mr. Ranjit Shetty, Mr. Anurag Mankar Advocates i/b. Argus Partners for the Applicant.

Per: Mr. B.S.V. Prakash Kumar, Member (J)

ORDER

It's an amalgamation between wholly owned subsidiary companies namely, Windermer Properties Pvt. Ltd, Haddock Properties Pvt. Ltd., Grandeur

Properties Pvt. Ltd., Winchester Properties Pvt Ltd., Pentagram Properties Pvt. Ltd. and their holding company namely, Housing Development Finance Corporation Ltd.

2. The prayer of the transferee company, i.e., holding company of the transferor companies aforementioned is, that all these transferor companies being 100% subsidiaries of it; the net worth of the transferee company as well as the transferor companies being positive; there being no re-organisation of the capital of the transferee company or issuance of fresh shares to the shareholders of the transferor companies and there being no arrangement with its shareholders or compromise with its creditors of the Transferee company, it does not require to hold either shareholders' meeting or creditors' meeting for approval of this Scheme, henceforth it has sought direction from this Tribunal exempting it from passing through the procedure laid under section 230-232 of the Companies Act 2013.

3. The Senior counsel Shri Darius Khambata appearing on the applicant company behalf submits that this applicant company has 100% shareholding in all these transferor companies; its net worth is positive of **Rs.38,641,09,78,963** crores and net worth of these transferor companies is almost in decimals comparing to the net worth of the Transferee Company. Since no liability is going to be added to this holding company by merging of its subsidiaries with it, he says, there is no need to enter into any compromise with its creditors. He further submits that even after all these subsidiaries' (transferors) shareholdings are cancelled, no new shares to be issued to the holding company because this holding company itself is 100% shareholder of all these transferor companies, therefore there will not be any change to the share capital of the Holding Company; moreover since the holding company being transferee, all its subsidiaries will get subsumed into the holding company without parting any of its undertaking to any other company.

4. To justify the contention, this Applicant Counsel relied upon ***Bharavi Laboratories Pvt. Ltd.*** dated 9.12.2016 passed by the Hon'ble High Court of Bombay, ***Reliance Jamnagar Infrastructure Ltd., In re (2013) 176 Comp Cas 217 (Gujarat); Nokia Siemens Network India Pvt Ltd. (2009) 150 Comp Cas 728 (Karn); Andhra Bank Housing Finance Ltd., In re (2003) 118 Comp Cas 295 (AP); Saurashtra Paints Ltd. and GNP (Madras) Ltd with GoodlassNerolac Paints Ltd. (2003) 105 (3) Bom. L.R. 767; Mahamba Investments Ltd. v. IDI Ltd. (2001) 105***

Comp Cas 16 (Bom); Bank of India Ltd. v. Ahmedabad Manufacturing and Calaco Printing Co. Ltd. (1972) 42 Comp Cas 211 to say that whenever wholly owned subsidiary companies entered into a Scheme merging with holding company, Holding Company need not undergo the process envisaged u/s 391-394 of Companies Act, 1956, which is in para materia to the process u/s 230-232 of Companies Act, 2013.

5. The Senior Counsel on the Applicant behalf propounds that since no reconstruction or arrangement happens with its shareholders or creditors, the procedure under Chapter – XV is not required thrusting upon this holding company for this merger has no bearing upon its members or creditors.

6. To further substantiate this proposition, the applicant (holding company) counsel has taken us to Section 179 of Companies Act, 2013 to say that the Board of Directors of a Company are empowered to exercise all such powers, and to do all such acts and things as the Company is authorised to exercise and do subject to the provisions contained in this Act, or the Memorandum or Article or in any Regulations not inconsistent therewith and including the regulations made by the company in General Meeting. In sub Section 3 (i) of this Section 179, it has been articulated that the Board of Directors of the company can even exercise powers on behalf of the company by means of resolutions passed at the meetings of Board to approve amalgamation, merger or reconstruction, meaning thereby Board of Directors are empowered to approve any Scheme that is falling within the arrangement as mentioned in the Chapter of Compromises, Arrangements &Amalgamations.

7. As Section 179 speaks of Powers of Board, following Section 180 speaks of Restrictions on powers of Board. It is indeed a caveat over section 179 envisaging that the Board of Directors shall take consent of the company by special resolution, if company,

1) to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking of the whole or substantially the whole or any of such undertakings;

2) to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;

3) to borrow money, including the money already borrowed, exceeding aggregate of its paid up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business or to remit or give time for repayment of any due from the Director.

4) to remit, or give time for the payment of, any debt due from a director.

8. The Counsel says that when there is no restriction on the Board u/s 180 to enter into scheme and approve it as long as company does not sell, lease or dispose of its undertaking, does not propose to invest in securities trust the amount of compensation coming from merger or amalgamation, does not borrow beyond limit mentioned thereat, does not remit or give time for the payment of any debt due from a director, since section 179 allows the Board to approve amalgamation, merger or reconstruction, simultaneously, Board of Directors are empowered to do the same and it is binding upon company. Here, for this holding company is not doing any of the acts covered u/s 180, the Board of the Applicant Company is empowered to approve this scheme without taking consent of the shareholders as stated in section 180 of the Act.

9. Now the point for consideration before this Bench is as follows:

Whether this holding/transferee company requires undergoing the process laid down in Chapter – XV or not?

10. Before to discuss the point for consideration, there are few words like compromise, arrangement and amalgamation to be understood, whose meaning has been stabilised over a period of time. To any word when no separate meaning deviating from old enactment has been given in the respective enactment in particular, terminology peculiar to a particular subject shall be understood in the way so far understood.

11. ***Compromise*** means an amicable agreement between parties to a controversy to settle their differences by making mutual concessions, as distinguished from adjudication on the basis of exact ascertainment of the

opposing rights. In compromise, the parties agree to try to settle between themselves by give –and – take arrangement, whereas arrangement includes a reorganization of the share capital of the company by consolidation of shares or by division of shares or extension of time to debenture holders, normally a compromise or arrangement is limited to internal arrangement either between the company and its creditors or between the company and its members, but amalgamation on the other hand, is for the reconstruction of the company or companies involving merger or amalgamation.

12. By looking the meaning of these three words – compromise, arrangement and amalgamation, it is clear that former two words 'compromise' and 'arrangement' speak about internal arrangement in a company, whereas amalgamation is blending of two or more companies involving merger or the amalgamation of one company or more with another company/companies. One basic thing to be understood is, the trigger point for invocation of jurisdiction for compromises or arrangements is an application to the Tribunal for ordering a meeting to be held to get approval from the shareholders/ creditors of the respective company, unless such application is made, perhaps initially there won't be any beginning to undergo the process set out in this chapter. If at all any change is likely to happen to any of its members/creditors by any of the arrangements the company wants to have, then obviously the company shall go for the process applicable to it in chapter of Compromises, arrangements and amalgamations, therefore, all these approvals and monitoring by Tribunals is to ensure that stakeholders are not adversely affected by any of these arrangements.

13. Here is the key, if any change to the rights of any of the members/creditors, majority approval of those persons whose rights are likely to be affected has to be taken. There can't be any relaxation to this approval; the company has to go through it. But when no change is proposed to any of its members/creditors rights, then that company does not need to have any compromise or arrangement with its members/creditors.

14. On giving combined reading to section 230 (1) and section 232 (2) of the Act 2013, it is noticeable that entire section 230 deals with compromises and arrangements within a company, whereas section 232, though it speaks of procedure laid u/s 230 (3-6) applicable to mergers and amalgamations, the requisites u/s 232 (1) is beyond the scope of section 230 (1).

15. One aspect is common in sections 230 (1) and 232 (1), that is in both the cases, there shall be a proposal for scheme and that meeting shall be either with creditors or members, for calling such meeting, the company or any other category of a person authorized u/s 230 (1) shall make an application, on such application alone Tribunal will order for meeting.

16. On such application, to invoke subsection (1) of 232, there shall be two more additional essentials, one – that the scheme involves merger or amalgamation of two or more companies and two – in such scheme, whole or any part of the undertaking, property or liabilities of any company (transferor) is required to be transferred to another company (transferee) or is proposed to be divided among and transferred to two or more companies.

17. For going into legal and factual intricacies, we shall look into what section of law saying, since section 230 (1) is the opening section to this Chapter, read the text of it, before coming to section 232 of the Act 2013.

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

(1) ***Where a compromise or arrangement is proposed*** *—*

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

(b) ***between a company and its members*** *or any class of them,*

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

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

18. For this section begins with saying that where a compromise or arrangement is proposed with shareholders or creditors, as the case may be, and when an application comes before NCLT, it will order a meeting to be called, held and conducted in such manner as the Tribunal directs. By close reading of this section, conclusion comes is that when company wants to have a proposal for some arrangement with its members/creditors as the case may be, it will apply to

the Tribunal to invoke its jurisdiction under the respective section to ordering a meeting as mentioned in the section. Sometimes, arrangement of clauses, placement of adjectives or adverbs makes difference to its meaning and emphasis. Since this section begins with *where a compromise or arrangement is proposed,* if no such proposal to compromise or arrangement with its creditors or members is present, obviously there won't be any application asking for a meeting to be ordered by the Tribunal. Whenever we try to understand any section or statute, we shall try to understand in the way it is put together to gather the objective of the respective section. When interpretation of statutes normally do not allow to take help even from the head note of the very same section as long as reading of section makes the meaning clear, so the wisdom inbuilt in the legislation alone will become mandate, nothing more nothing less. This principle has been reiterated by our own Apex Court umpteen times. The clear mandate is whenever any slightest change comes to the rights or economic interest of the members/creditors or any class of them, then it shall go before them for their approval.

19. The first essential is there shall be a proposal for compromise or arrangement from either company or the shareholder or creditor, that proposal must be placed before Tribunal through an application, then the Tribunal will order for calling, holding and conducting the meeting as the case may be.

20. In this sub section, it is nowhere mentioned that scheme between or among the companies has to be approved by Tribunal, it is only said that if at all any internal arrangement in a company with its shareholders or with its creditors happens, then a proposal will arise, and on such proposal, if this Bench is satisfied to order for a meeting, it will order accordingly. Therefore, if no compromise or arrangement is proposed, there won't be any occasion for the company or for anybody to make such proposal, and there can't be any occasion to this Tribunal to order a meeting.

21. In the present case, since it is amalgamation, section 232 of the Companies Act 2013 will come into operation, therefore let us look into what is in the text of section 230 (1) of the Act:

"Merger and Amalgamation of Companies: -

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

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

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting *of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the* ***Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

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

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

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

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

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation.—For the purposes of this section,—

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

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

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

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

22. In this section, a separate procedure has been plated out to follow, except application of some portion of section 230 (1) and of section 230 (3-6), therefore for clearance of a scheme under section 232, unlike in section 230, this entire section (sec. 232) has to be followed.

23. Though section 232 (1) begins with as begun in section 230 (1), as we go deep down into the section, beginning of both section 230 (1) and section 232 (1) will remain same, speaking of filing an application either for meeting with creditors or members, but subsequent thereto, for invoking section 232 (1), there shall be two additional essentials in the scheme not present in section 230 (1) of the Act, which are as follows: -

(1) that such compromise or arrangement has been proposed for the reconstruction involving merger or the amalgamation of two or more companies, **and**

(2) that the whole or any part of undertaking of any company, is proposed to be transferred to another/transferee company or proposed to be divided among and transferred to two or more companies.

24. On seeing such an application seeking compromise or arrangement, Tribunal may on an application will pass an order for meeting with creditors or members, as the case may be.

25. Like in section 230(1), in section 232 (1) also, order for meeting is sought to have simpliciter internal arrangement by compromise or arrangement with respective company/companies, but if the purpose of having this compromise or arrangement involves merger/demerger or amalgamation between/among companies, then such internal arrangement is to get external arrangement between or among companies. In former case, it is a scheme for an internal arrangement (section-230) within a company, whereas in later case, the object of a scheme is for having external arrangement (section 232) between/among companies. But in both the cases, order either u/s 230 (1) or u/s 232 (1) is for meetings with creditors/members, in both these subsections it is nowhere stated that approval requisite is for scheme in between companies. Therefore, monitoring authority of the Tribunal in both the cases is to ensure stakeholders of any of these companies are not adversely affected by these schemes. When external change of merger by absorption or by formation of a new company leads to internal change of the rights of stakeholders of a respective company, then that company ought to put it to the affected party (creditors or members or both) that the respective company entering into an arrangement with other company/companies changing the rights and interest of the creditors/members.

26. The moot point for consideration is when external arrangement does not alter the rights of the stakeholders of that company, do we need to insist upon such company to call and hold meetings in respect to such scheme? Law is always to be understood on need-based approach, unless it is specifically directed to obtain permission or license to do an act. This kind of obtaining permission of State or Court normally arises to ensure not only to ensure the economic interest of the members/creditors is not adversely affected, but also to ensure fiscal discipline or to remain adhere to public policy or to maintain law and order. Since main emphasis held out is on protecting the rights of members/creditors of the companies involved in mergers and amalgamations, as long as the merger or amalgamation has no bearing internally on creditors/members of the respective company, we with all humility believe, such company need not propose a meeting with its creditors or members.

27. In the back drop of the above proposition, let us examine as to whether this Holding Company internal arrangement in existence requires any change to remain compatible with external arrangement it is having with transferor companies or not? The answer is there need not be any internal arrangement within Transferee Company because,

(i) that this applicant company has 100% holding in all the transferor companies;

(ii) that net worth of this transferee company is positive of Rs.38,641,09,78,963, whereas net worth of the transferor companies is in decimals when compared to the net worth transferee Company.

(iii) that the transferor companies being wholly owned subsidiaries of the applicant company, it need not issue any shares to the shareholders of the subsidiaries for the applicant itself is 100% shareholder of all the Transferor companies;

(iv) that this Scheme will not necessitate the applicant company to re-organise either its shareholding or its debt position because the shareholders of the holding company are nothing but shareholders of subsidiary companies through holding company;

(v) that the holding company being a transferee company, its existence will remain as before without any change either to its shareholding pattern or to its debt position;

(vi) that in the conspectus of Sections 179 and 180 of the Companies Act, 2013, the Board is empowered to approve any Scheme that is falling under the Chapter of Compromises, Arrangements and Amalgamations, unless the Board is under obligation to obtain consent from its shareholders as prescribed u/s 180 of the Act;

(vii) that no undertaking of holding company is parted away from it, therefore there need not be any separate approval from the shareholders for merging of its subsidiaries with the holding company;

28. On reading the citations supra and hearing of the senior counsel, I understand that this ruling of exempting Holding Company from holding meetings with either members or creditors when 100% subsidiaries of it subsume into their holding company is popularly known in Mumbai as Mahamba Ruling (***Mahamba Investments Ltd. v. IDI Ltd. (2001) 105 Comp Cas 16 (Bom)).*** One fact should not get lost sight of is under new Companies Act, 2013, dispensation of a shareholders meeting has been done away, which was frequently allowed under 1956 Act regime. This Bench has elaborately dealt with this point in between L&T Electricals and Automation Limited order dated 13.02.2017 saying that though standing committee suggested for dispensation to shareholders meeting, Central Government had not conceded to, and finally Companies Bill was approved by the Parliament without making provision for dispensation of shareholders meeting.

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

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

whether the transferee company has to comply with remaining procedure so as to get sanction for the scheme or not.

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

32. Since the purpose of notifying scheme to the regulating authorities is not only to know about holding meeting, but also to look into as to whether various stakeholders interest is protected or not, this notice about scheme with the documents shall be sent to various authorities as stated under subsection (5) of section 230, therefore this Bench cannot and will not exempt the transferee company form complying with sending notice to the regulating authorities and giving advertisement.

33. Soon after compliance of above, if this Bench is satisfied with compliance under section u/s 232 (1) & (2) as mentioned above, may sanction the scheme with provisions for, in this case, for transfer of undertaking of transferor to its holding company; since allotment of shares not happening in transfer company, no provision need to be made for it; transfer of legal proceedings by or against transferor companies if any to its holding company, transfer of transferors' employees to the transferee company; a certificate over accounting treatment by the company auditor. When the statute clearly mandates all these aspects to be

complied with, so as to make the transferee as party to the approval of the scheme and make this approval binding upon the holding company, the holding company shall be a party to the approval of scheme, to get such binding, the holding company shall also file an application for notifying the fact of proposal of scheme as mentioned above.

34. Therefore we cannot go to that extent to say that no application is required to obtain for approval for Scheme because if application is not there from two parties who are separate entities entering into a Scheme, we doubt about the binding nature of this order over the two parties entered into a Scheme. Therefore, this Transferee Company shall file an application before this Bench with the power it has from its Board of Directors by notifying it to all Regulating Authorities as mentioned above.

35. It is hereby made clear that when Transferor companies are wholly owned subsidiaries of the Transferee company and the financial position of the Transferee is highly positive and this merger is not effecting the rights of the applicant shareholders or creditors, allowing Transferee company to obtain approval without taking the shareholders' approval is permissible under law, henceforth it is hereby held that this transferee company need not hold any meeting either with its creditors or members.

36. Accordingly this application is disposed of directing the transferee company to file application for compliance of remaining mandate under section 232 and also to file company petition for sanction of scheme.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B. S. V. Prakash Kumar, Member (J)