



February 29, 2024

**Department of Corporate Services
BSE Limited,
Mumbai 400 001**

**The Listing Department
National Stock Exchange of India Limited,
Mumbai 400 051**

Through: BSE Listing Centre

Through: NEAPS

Scrip Code: Equity - 533273
Debt - 973654, 973655

Scrip Symbol: OBEROIRLTY

Sub: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Re: Update on the Scheme of Amalgamation of 3 (three) wholly owned subsidiaries viz. Oberoi Constructions Limited, Oberoi Mall Limited, and Evenstar Hotels Private Limited with Oberoi Realty Limited and their respective shareholders ("**Scheme**")

Dear Sirs,

In accordance with Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements Regulations, 2015, we write to inform you that the Hon'ble National Company Law Tribunal, Mumbai ("**NCLT**") has vide an order dated February 28, 2024 ("**Order**") approved the Scheme.

The copy of the Order, as available on the website of the NCLT, is enclosed herewith for your information and records. The certified copy the Order shall be obtained in due course.

The Scheme will come into effect from the date of filing of the certified copy of Order with the Registrar of Companies, Mumbai, Maharashtra (i.e. the 'Effective Date' as per the Scheme).

Thanking you.

For **Oberoi Realty Limited**

Bhaskar Kshirsagar
Company Secretary

Encl: As above.

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

**C.P. (CAA) No. 27/MB/C-III/2023
Along with C.A. /335/C-III/MB/2023
CONNECTED WITH
C.A. (CAA) No. 225/MB/C-III/2022**

In the matter of the Companies Act,
2013

AND

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

And

In the matter of Scheme of
Amalgamation of **Oberoi
Constructions Limited** (First
Petitioner Company or Transferor
Company 1) and **Oberoi Mall Limited**
(Second Petitioner Company or
Transferor Company 2) and **Evenstar
Hotels Private Limited** (Third
Petitioner Company) with **Oberoi
Realty Limited** (Transferee Company)
and their respective shareholders
(**modified Scheme**)

Oberoi Constructions Limited,)
CIN: U45202MH1993PLC074836)
a company incorporated under the)
provisions of the Companies Act,)

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

1956 having its registered office at)
Commerz, 3rd Floor, International)
Business Park, Oberoi Garden City,)
Off Western Express Highway,) ... *First Petitioner Company/*
Goregaon (East), Mumbai – 400 063) *Transferor Company No. 1*

Oberoi Mall Limited,)
CIN: U45202MH2001PLC132119)
a company incorporated under the)
provisions of the Companies Act,)
1956 having its registered office at)
Commerz, 3rd Floor, International) ...*Second Petitioner Company/*
Business Park, Oberoi Garden City,) *Transferor Company No. 2*
Off Western Express Highway,)
Goregaon (East), Mumbai – 400 063)

Evenstar Hotels Private Limited,)
CIN: U55205MH2019PTC324929)
a company incorporated under the)
provisions of the Companies Act,)
2013 having its registered office at)
Commerz, 3rd Floor, International) ... *Third Petitioner Company/*
Business Park, Oberoi Garden City,) *Transferor Company No. 3*
Off Western Express Highway,)
Goregaon (East), Mumbai – 400 063)

Incline Realty Private Limited,)
CIN: U45400MH2014PTC255010)
a company incorporated under the)
provisions of the Companies Act,)
2013 having its registered office at)
Commerz, 3rd Floor, International)
Business Park, Oberoi Garden City,)
Off Western Express Highway,) ...*Fourth Petitioner Company*
Goregaon (East), Mumbai – 400 063)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

Oberoi Realty Limited,)
CIN: L45200MH1998PLC114818)
a company incorporated under the)
provisions of the Companies Act,)
1956 having its registered office at)
Commerz, 3rd Floor, International) ... *Fifth Petitioner Company/*
Business Park, Oberoi Garden City,) *Transferee Company*
Off Western Express Highway,)
Goregaon (East), Mumbai – 400 063)

(hereinafter transferor company 1, transferor company 2 and transferor company 3 are collectively referred to as “Transferor Companies” and Transferor Companies and Transferee Company are together referred as “Petitioner Companies”)

Order pronounced on: 28.02.2024

Coram:

Ms. Lakshmi Gurung : Member (Judicial)
Sh. Charanjeet Singh Gulati : Member (Technical)

Appearances:

For the Petitioners : Mr. Hemant Sethi, Ms. Devanshi Sethi i/b Hemant Sethi & Co.
For the Regional Director : Mr. Tushar Wagh, Deputy Director in RD (West) Mumbai & Mr. Gaurav Jaiswal

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Rules framed thereunder for sanction of the Scheme of Amalgamation of Oberoi

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

Constructions Limited (**First Petitioner Company or Transferor Company 1**) and Oberoi Mall Limited (**Second Petitioner Company or Transferor Company 2**) and Evenstar Hotels Private Limited (**Third Petitioner Company or Transferor Company 3**) with Oberoi Realty Limited (**Transferee Company**) and their respective shareholders (**modified Scheme**).

2. The Boards of the Petitioner Companies approved the Original Scheme of Amalgamation by passing their respective Resolutions on **09.08.2022** which are annexed to the Joint Company Scheme Petition (“Petition”).
3. Learned Counsel appearing on behalf of the Petitioner Companies submits that a Company Application No. 335 of 2023 was for amendment in the Original Scheme. By virtue of amendment, it is submitted that the Petitioner Companies do not intend to merge the Fourth Petitioner Company with the Transferee Company/Fifth Petitioner Company due to commercial and regulatory reasons. A copy of the said Company Application has been served to the offices of the Regional Director, Western Region, Mumbai and the Registrar of Companies, Mumbai, both on 09.08.2023. Learned Counsel further submits that the modified Scheme of Amalgamation is for the merger of First Petitioner Company, Second Petitioner Company and the Third Petitioner Company with the Transferee Company/ Fifth Petitioner Company and their respective shareholders (**modified Scheme’/ Scheme**). It is submitted that the Fourth Petitioner Company and their shareholders will not be the parties to the modified Scheme, and the same shall also not affect the Petitioner Companies’ capability to serve their individual obligations of any nature.
4. It is in the best interest of the Petitioner Companies and its shareholders to revise the Original Scheme due to commercial and regulatory reasons.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

Therefore, all references in the Original Scheme relating to merger of the Fourth Petitioner Company with and into the Fifth Petitioner Company are being deleted as set out in the Company Application No. 335 of 2023.

5. The Board of the Petitioner Companies approved the modified Scheme of Amalgamation by passing their respective Resolutions on **31.07.2023** which are annexed to the Company Application No. 335 of 2023 in Company Scheme Petition.
6. The Appointed Date is **1st April 2023**.
7. The registered offices of the Petitioner Companies are situated in Mumbai, Maharashtra and hence the subject matter of the Petition is within the jurisdiction of this Bench.
8. Learned Counsel submits that the Company Scheme Petition No. C.P. (CAA) No. 27/MB/2023 has been filed in consonance with the **Order of the Tribunal dated 01.12.2022** passed in the Company Scheme Application No. C.A. (CAA) No. 225/MB/2022.
9. It is observed that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules and Regulations made thereunder. The said undertaking is accepted.
10. The **Nature of Business of Petitioner Companies:**
The Transferor Company 1 is engaged primarily in the business of real estate development. Transferor Company 2 is engaged primarily in the

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

business of leasing of immovable properties. Transferor Company 3 is engaged primarily in the business of hospitality. The Transferee Company is engaged primarily in the business of real estate development and hospitality.

11. The Learned Counsel submitted the **Rationale for the Scheme** as under:
- a. *Simplification of overall group structure and creating efficiencies through amalgamation;*
 - b. *Create enhanced value for the stakeholders of the Transferee Company and a clear strategic road map towards improved performance outlook and increased investor confidence;*
 - c. *Optimal utilization of existing resources through consolidation of operations into a single legal entity;*
 - d. *Provide an opportunity to leverage and pool manpower of the respective companies;*
 - e. *Derive operational and financial synergies through prudent financial management and cost reduction; and*
 - f. *Better administration, reduction / rationalization in costs, focused operational efforts and elimination of duplication.*

12. **Consideration:**

Learned Counsel for the Applicant Companies further submit that the Transferor Company 1, Transferor Company 2, and Transferor Company 3 are wholly owned subsidiaries of the Transferee Company and the entire share capital of Transferor Companies is owned and controlled by the Transferee Company. There will not be any issue and allotment of any shares by the Transferee Company as consideration pursuant to the merger.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

13. The shares of the Transferor Companies are not listed on any stock exchange. The equity shares of the Transferee Company are listed on BSE and NSE.
14. The Tribunal vide Order dated **01.12.2022** admitted the Company Scheme Application bearing no. CA(CAA)/225/MB/2022 and inter-alia, gave the following directions:
- a) Dispensation of convening the meetings of equity shareholders of the Transferor Companies in view of consent affidavits obtained from all equity shareholders of the Transferor Companies;
 - b) Dispensation of convening the meetings of secured creditors of the Transferor Company No. 1 and 3 in view of consent affidavits obtained from all secured creditors of the Transferor Companies;
 - c) Dispensation of convening meetings of unsecured creditors of Transferor Company No. 1 and 3 in view of consent affidavit obtained from Transferee Company which constitutes 94.65% and 99.98% of the outstanding value of Transferor Company 1 and 3 respectively;
 - d) Transferor Company 2 has no secured creditors, therefore, the question of convening meeting of secured creditors of Transferor Company 2 did not arise. The convening of meeting of unsecured creditors of Transferor Company 2 was dispensed in view of the net worth of Transferor Company 2;
 - e) All Transferor Companies to send individual notices to all the creditors at their last known address or through email;
 - f) The convening of meetings of shareholders and creditors of the Transferee Company were dispensed with in view of the fact that all the Transferor Companies are wholly-owned subsidiaries of the Transferee Company. Reference was made to judgment of Hon'ble

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

Bombay High Court passed in **Mahaamba Investments Limited vs. IDI Limited [(2001) 105 Company Cases]**.

15. In compliance to this Tribunal's order dated 01.12.2022 in CA(CAA)/225/MB/2022, individual notices were issued to all the secured and unsecured creditors of all the Transferor Companies and the Petitioner Companies have enclosed proof of service. The copies of emails sent and postal receipts proving dispatch of notices to the secured and unsecured creditors of Transferor Companies are annexed to this Petition.
16. The Regional Director has filed Report dated 14th March 2023. Relevant extract from the Regional Director's report and the response of the Petitioner Companies thereto are reproduced below:

Sr. No.	Observations from the Report	Response of the Petitioner Companies
a)	That on examination of the report of the Registrar of Companies, Mumbai dated 24/02/2023 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Companies has filed Financial Statements up to 31/03/2022. The ROC has further submitted that in his report dated 24/02/2023 which are as under :-	The Petitioner Companies submits that: i. There is no inquiry, investigations, inspections, prosecutions, technical scrutiny, or complaints that are pending against/ not replied by the Petitioner Companies.

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

<p>i. That the ROC Mumbai in his report dated 24/02/2023 has also stated that No Inspection, Investigations & Prosecutions under CA, 2013 are pending against the Petitioner Companies.</p> <p>ii. That one inquiry against the company namely Oberoi Construction Limited is pending and inquiry follow up action is going on against the company namely Oberoi Realty Limited.</p> <p>As per records available at this office, Inquiry/Technical Scrutiny is pending / under process against two companies namely :-</p> <p>1. Oberoi Constructions Limited – Ministry has ordered inquiry on 08.06.2010 & inquiry report is yet to be received from ROC, Mumbai.</p> <p>2. Oberoi Realty Limited – Ministry has ordered inquiry on 16.04.2018, Inquiry report submitted by ROC, MUMBAI dated 05.01.2021. the instruction from Ministry is received on 18.08.2021 and same has been forwarded to ROC, Mumbai on 19.01.2023 and inquiry follow up action is being carried out by ROC, Mumbai. Further in the inquiry u/s. 206(4) in respect of Oberoi Realty Limited the following issues are being examined:-</p>	<p>ii. The First Petitioner Company has not received any inquiry/ technical scrutiny from Registrar of Companies. Further, the First Petitioner Company will comply with the directions of Registrar of Companies on any inquiry/ technical scrutiny as and when received, if any.</p> <p>The Fifth Petitioner Company has replied to the inquiry from Registrar of Companies. Further, the Fifth Petitioner Company will comply with the directions of Registrar of Companies on the inquiry as and when received, if any.</p> <p>The Petitioner Companies undertakes to comply with notice u/s. 206(4)/ order, prosecutions, adjudications which may be taken by the ROC, Mumbai, RD, Mumbai and Ministry of Corporate Affairs as per law on submission of inquiry reports in the matter of First and Fifth Petitioner Companies.</p> <p>iii. Further the Petitioner Companies submits that:</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

<p>a) Utilization of IPO money of Rs. 1028.61 crore in the year 2010 by collecting inputs/ comments of SEBI on IPO utilization by the subject company.</p> <p>b) Examination of complaint issue relating to purchase of 5 star hotel at Goa in bank auction under SARFAESI at lower price than fair value.</p> <p>c) Irregulating in purchase of plot in Malad, Mumbai which was allotted to M/s. Ciba Gibey & Novartis India Limited in 1996 for the purpose of setting up research center in medicine and purchase was made at Rs105 crores though market value was Rs. 300 crores.</p> <p>It is further submitted that, the Petitioner Companies, Directors, KMP and any other connected persons may be directed to undertake to comply with notice u/s. 206(4)/ order, prosecutions, adjudications which may be taken by the ROC, Mumbai, RD, Mumbai and Ministry of Corporate Affairs as per law on submission of inquiry reports in the matter of subject companies. Further, the Hon'ble NCLT may decide the matter on merit keeping in view of above observation of ROC, Mumbai in this regard.</p> <p>iii. Further ROC has mentioned as follows:-</p>	<p>a) Form GNL-1 have been filed vide SRN No. F59633891 dated 14 March 2023 for the First Petitioner Company, vide SRN No. F59634527 dated 14 March 2023 for the Second Petitioner Company, vide SRN No. F59633974 dated 14 March 2023 for the Third Petitioner Company, vide SRN No. F59635078 dated 14 March 2023 for the Fourth Petitioner Company and vide SRN No. F59634535 dated 14 March 2023 for the Fifth Petitioner Company. Enclosed herewith are the said Forms GNL-1 along with their challan copies as Annexure A1 to Annexure A5. Further, Form GNL-2 have been filed vide SRN No. F54203187 dated 22 December 2022 for the First Petitioner Company, vide SRN No. F54203534 dated 22 December 2022 for the Second Petitioner Company, vide SRN No. F54203070 dated 22 December 2022 for the Third Petitioner Company, vide SRN No. F54202452 dated 22 December 2022 for the Fourth Petitioner Company and vide SRN No. F54205083 dated 22</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

<p>a. Form GNL-1 not filed by the Petitioner Companies.</p> <p>b. Complaint bearing SRN I00022076 and I00030455 is pending against the Transferee Company.</p> <p>c. As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital shall be set off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</p> <p>d. No objection certificate should be obtained from Real Estate Regulatory Authority.</p> <p>e. All Transferor and Transferee Companies may be filed GNL-1 instead of Form GNL-2.</p> <p>f. Composite notice in CAA-3 is required to be issued to SEBI and stock exchange.</p> <p>g. Interest of creditors should be protected.</p>	<p>December 2022 for the Fifth Petitioner Company. Enclosed herewith are the said Forms GNL-1 along with their challan copies as Annexure B1 to Annexure B5.</p> <p>b) the Transferee Company has filed requisite replies against complaints received. Further, the Transferee Company will comply with the directions of Registrar of Companies on the complaints as and when received, if any.</p> <p>c) the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3)(i) of the Companies Act, 2013.</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

		<p>d) the Petitioner Companies were not required to obtain no objection certificate from Real Estate Regulatory Authority. Further, the notices to Maharashtra Real Estate Regulatory Authority were served on 22 December 2022 (as per directions in application admission order) and on 28 February 2023 (as per directions in petition admission order) and affidavits of service to this effect were filed with the National Company Law Tribunal, Mumbai Bench by the Petitioner Companies. The First and Fourth Petitioner Companies have undertaken to make necessary applications (upon approval of the Scheme) with Maharashtra Real Estate Regulatory Authority for seeking approval for transfer of their respective rights and obligations in their respective real estate projects in favour of the Transferee Company. Enclosed herewith are the acknowledgement copies of the notices served to Maharashtra Real Estate Regulatory Authority as</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

		<p>Annexure C1 and Annexure C2.</p> <p>e) the Petitioner Companies have separately filed Forms GNL-1 on 14 March 2023 and Forms GNL-2 on 22 December 2022 as mentioned in point a above.</p> <p>f) the Petitioner Companies have issued notices to SEBI and Stock Exchange on 22 December 2022 (as per directions in application admission order) and on 28 February 2023 (as per directions in petition admission order) and affidavits of service to this effect were filed with the National Company Law Tribunal, Mumbai Bench by the Petitioner Companies. Enclosed herewith are the acknowledgement copies of the notices served to SEBI and Stock Exchange as Annexure D1 to Annexure D4.</p> <p>g) the interest of creditors will be protected.</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

b)	Transferee company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.	The Petitioner Companies submit that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.
c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.	The Petitioner Companies submit that the Transferee Company undertakes that in addition to compliance of IND-AS 103 for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as IND-AS 8, as applicable.
d)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	The Petitioner Companies submit that the Scheme enclosed to the Company Application and the Company Petition are one and same and there is no discrepancy, and no change is made.

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

e)	<p>The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the 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 shall be binding on the petitioner companies concerned.</p>	<p>The Petitioner Companies submit that the Petitioner Companies have served notice to the concerned authorities which are likely to be affected by the Amalgamation or arrangement, as per provisions of Section 230(5) of the Companies Act 2013. The Petitioner Companies undertakes that approval of the Scheme by this Hon'ble Tribunal may not deter such appropriate authorities to deal with any issues that may arise, as a result of the Scheme, subject to appropriate remedies available to the Petitioner Companies under the relevant laws.</p>
f)	<p>As per Definition of the Scheme, "Appointed Date" means 1st April 2022, or any other date as may be determined by the Appropriate Authority, being the date from which this Scheme shall be deemed to be effective, in the manner described in the Clause 4 of this Scheme;</p> <p>"Effective Date" means the last of the dates on which the certified copies of the Order(s) of the NCLT sanctioning the Scheme of Amalgamation ("Order(s)") is filed with the respective Registrar of Companies by the Transferor Companies and the Transferee Company. All the references in this Scheme to the</p>	<p>The Petitioner Companies submit that the Appointed Date is 1 April 2022 as per the Scheme. The Petitioner Companies further submits that the Petitioner Companies will comply with the requirements as to Appointed Date and Effective Date, as clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

	<p>words “Scheme taking effect” or “upon the Scheme becoming effective” shall be with reference to the Effective Date;</p> <p>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	
g)	<p>Petitioner Companies shall undertake to comply with the directions of Income tax department, if any</p>	<p>The Petitioner Companies submit that the Petitioner Companies will comply with the directions of Income tax department, if any.</p>
h)	<p>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</p>	<p>The Petitioner Companies submit that the Petitioner Companies will comply with the directions of the concerned sectoral Regulatory, if any.</p>
i)	<p>Petitioner Companies has foreign shareholders; hence Petitioner Companies shall undertake to submit acknowledged copy of notice served to RBI, FEMA, FERA u/s. 230(5) of CA, 2013 in form CAA-3.</p>	<p>The Petitioner Companies submit that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and accordingly there is no issue and allotment of shares pursuant to the Scheme. Hence, there shall be no change in shareholding of the Transferee Company and accordingly, there is no requirement to submit acknowledged copy of notice served to RBI, FEMA, FERA u/s. 230(5) of CA, 2013 in form CAA-3.</p>

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

j)	<p>OBEROI REALTY LIMITED (“ORL” or “Transferee Company”) is a Public Listed Company, hence Petitioner Companies shall undertake to comply with listing/SEBI LODR Regulations with observations of BSE & NSE, if any, in this regard.</p>	<p>The Petitioner Companies submit that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and accordingly, there were no observations received from BSE & NSE. However, the Petitioner Companies shall undertake to comply with listing/ SEBI LODR Regulations and with observations of BSE & NSE, if any, in this regard.</p>																									
k)	<p>As per shareholding pattern as on 31.03.2022 submitted by the Petitioner company, details of shareholding are as follows:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Sr. No.</th> <th style="text-align: center;">Petitioner Company</th> <th style="text-align: center;">Name of Shareholder</th> <th style="text-align: center;">% of shares held</th> <th style="text-align: center;">Remark</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">OBEROI CON- STRUCTIONS LIM- ITED (“OCL” or “Trans- feror Company 1”)</td> <td style="text-align: center;">OBEROI RE- ALTY LIMITED (“ORL” or “Transferee Com- pany”)</td> <td style="text-align: center;">100%</td> <td style="text-align: center;">No Form BEN-2 has been filed by any of the Peti- tioner Com- panies as per records available at MCA21 Portal</td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">OBEROI MALL LIM- ITED (“OML” or “Trans- feror Company 2”)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">3</td> <td style="text-align: center;">EVENSTAR HO- TELS PRIVATE LIMITED (“EHPL” or “Trans- feror Company 3”)</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">INCLINE REALTY PRIVATE LIMITED (“IRPL” or “Trans- feror Company 4”)</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remark	1	OBEROI CON- STRUCTIONS LIM- ITED (“OCL” or “Trans- feror Company 1”)	OBEROI RE- ALTY LIMITED (“ORL” or “Transferee Com- pany”)	100%	No Form BEN-2 has been filed by any of the Peti- tioner Com- panies as per records available at MCA21 Portal	2	OBEROI MALL LIM- ITED (“OML” or “Trans- feror Company 2”)				3	EVENSTAR HO- TELS PRIVATE LIMITED (“EHPL” or “Trans- feror Company 3”)				4	INCLINE REALTY PRIVATE LIMITED (“IRPL” or “Trans- feror Company 4”)				<p>So far as the observation in paragraph 2(k) of the Report of the Regional Director is concerned, the Petitioner Companies submits that Form BEN-2 have been filed vide SRN No. H78317633 dated 23 July 2019 for the First Petitioner Company, vide SRN No. H78318490 dated 23 July 2019 for the Second Petitioner Company, vide SRN No. H78259389 dated 23 July 2019 for the Third Petitioner Company and vide SRN No. H78318227 dated 23 July 2019 for the Fourth Petitioner Company. Enclosed herewith are the said Forms BEN-2 along with their challan copies as Annexure E1 to Annexure E4.</p> <p><i>However, the Fourth Petitioner Company will not be a party to the modified Scheme i.e., the</i></p>
Sr. No.	Petitioner Company	Name of Shareholder	% of shares held	Remark																							
1	OBEROI CON- STRUCTIONS LIM- ITED (“OCL” or “Trans- feror Company 1”)	OBEROI RE- ALTY LIMITED (“ORL” or “Transferee Com- pany”)	100%	No Form BEN-2 has been filed by any of the Peti- tioner Com- panies as per records available at MCA21 Portal																							
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

<p>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and to file Form BEN-2 for declaring name of the significant beneficial owner with concerned ROC.</p>	<p><i>Fourth Petitioner Company will not merge with the Fifth Petitioner Company and shall be exiting the scheme.</i></p>
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17. The supplementary report of the Regional Director was filed on 22.01.2024 making certain observation and the Petitioner Companies had responded on 29.01.2024. The relevant paragraphs are reproduced below:

Sr. No.	Observations from the Supplementary Report	Response of the Petitioner Companies
a)	<p>Further M/s Oberoi Constructions Private Limited (now M/s Oberoi Constructions Limited bearing CIN: U45202MHJ993PLC074836) is a transferor company and if Hon'ble NCLT deems fit, the scheme of merger may be approved, and in that case, it is submitted that NCLT may direct the directors of the said Transferor Company to undertake comply with/honor the ROC/ MCA notices/ order/ adjudication/ other proceedings arising in the completion of the said inquiry as per the law.</p>	<p>The Directors of First Petitioner Company i.e., Oberoi Constructions Limited shall undertake compliance with/honor the ROC/ MCA notices/ orders/ adjudication/ other proceedings arising in the completion of the said inquiry (as referred to in the RD Supplementary Report) as per the law.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

b)	It is also submitted that transferee company should also undertake to honor all ROC/ MCA notices/ order/ adjudication/ other proceedings in the matter of the Transferor Company. In view of the above, Hon'ble NCLT may decide the matter as deem fit.	Further, the Transferee Company i.e., Oberoi Realty Limited hereby undertakes that it shall honor all ROC/ MCA notices/ order/ adjudication/ other proceedings in the matter of the First Petitioner Company.
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18. Mr. Gaurav Jaiswal, representing the Regional Director's Office, submitted that the explanations and undertakings given by the Petitioner Companies are found satisfactory and that the Regional Director has no further objections to the Scheme. However, it is made clear that mere sanctioning of this Scheme will not prevent the Registrar of Companies from taking any action against the Transferee Company, in accordance with applicable law.

19. The Official Liquidator, Bombay High Court has filed his report dated 15.03.2023 making certain observations in paragraphs 11 & 12 which are as reproduced below:

"11. The Official Liquidator submits that with reference to clause No. 20.1 of the scheme it is stated that such clauses overrides the provisions of Companies Act, 2013 namely Section 232(2)(i) which inter-alia provides that, 'if a company is dissolved the fee paid by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Accordingly, clause No.20.1 may be modified.

12. It is observed that clause no. 15.1 has mentioned the absorption of permanent employees only of Transferor Companies in the Transferee Company. Hon'ble Tribunal may, if found fit, require the

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

company to consider the other categories of employees for absorption.”

20. During the hearing of the matter on 23.01.2024, this Tribunal sought clarification regarding the following:

- i) reasons for withdrawal of Fourth Petitioner Company from the Scheme,
- ii) transfer of only the permanent employees of the Transferor Companies, and
- iii) undertaking to be given in respect of pending inquiry.

Thereafter, an Additional Affidavit was filed on 30.01.2024. The Petitioner Companies' response regarding undertaking for inquiry is already reproduced in Para 17 above. As regards the OL report wherein transfer of permanent employees was questioned and reasons for withdrawal by Fourth Petitioner Company, it is submitted as follows:

“6. *The response of the relevant Petitioner Companies to the aforesaid observations from the OL Report are as under: -*

a) The First Petitioner Company, the Second Petitioner Company and the Third Petitioner Company hereby undertakes that the setting off of fees paid on their respective Authorised Share Capital shall be in accordance with the provisions of section 232(3)(i) of the Companies Act, 2013.

b) Further, the Petitioner Companies hereby undertakes that transfer of permanent employees pursuant to the Scheme to the Transferee Company shall be construed to mean and include ‘all employees’ of the First Petitioner Company, the Second Petitioner Company and the Third Petitioner Company who are in service on the date immediately preceding the Effective Date.

7. *The Fourth Petitioner Company had purchased and acquired certain pieces and parcels of lands situate in the State of Maharashtra in September 2014. The transfer of the said lands, in its current classification, is subject to approval of relevant*

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

offices/departments of the Government of Maharashtra. The Fourth Petitioner Company has made applications dated 22 May 2023 for change of the classification of the said loans and further sought confirmation that after the change of classification of the said loans no further approval shall be required for transfer of said lands under the applicable law. The Government's approval and confirmation on the above applications of the Fourth Petitioner Company has not been received till date. It is pertinent to note that the said applications were filed by the Fourth Petitioner Company after filing of the Company Scheme Application on 8 September 2022. Considering that the process of obtaining approval/change of classification is cumbersome and time consuming, the Petitioner Companies and the Fourth Petitioner Company decided to withdraw the proposed merger of the Fourth Petitioner Company with the Fifth Petitioner Company."

21. The Reports of the Regional Director and the Official Liquidator and the submissions/undertakings of the Petitioner Companies thereto are taken on record. The Transferee Company shall be bound by the undertakings given by it in Affidavits.

22. This Tribunal has received representation dated 19.01.2023 from M/s AMI Construction, an unsecured creditor of the First Petitioner Company, stating that an amount of Rs. 21,72,977 is due from the First Petitioner Company. It is further stated that AMI Constructions is an MSME registered entity. The Registration Certificate – Udyog Aadhar Memorandum is annexed to the Representation letter. It is submitted that *as per section 15 of the MSMED Act, 2006, in case a MSME supplies any goods or renders any services to a buyer, the buyer is required to make the payment on or before the date agreed upon by them. In any case, the period cannot exceed 45 days from the date agreed upon by them.* The Petitioner Companies filed an additional affidavit on 15.03.2023 stating that the unsecured creditor has a credit balance of Rs. 18,09,970 as on

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

30.06.2022 which when compared to the total outstanding liabilities of the First Petitioner Company constitutes a mere 0.0092% of the total outstanding debt. It is further submitted that the said unsecured creditor has not taken any steps for claiming or recovering the amount for the past 5 years and therefore, the claim is not maintainable and barred by limitation.

23. On considering the facts, we note that the First Petitioner Company has acknowledged debt of Rs. 18,09,970 as on 30.06.2022 payable to M/s AMI Constructions which shows that the First Petitioner Company has admitted the debt payable to the said unsecured creditor. Therefore, the contention that the claim is not maintainable and barred by limitation is rejected in view of section 18 of the Limitation Act, 1963 as the said amount is acknowledged in the books of the First Petitioner Company year after year, which is evidenced by way of notice being served on the said unsecured creditor. In view of the above discussions, we reject the contention of the First Petitioner Company that the claim is barred by limitation. We note that the Petitioner Companies, in response to the RD Report dated 14.03.2023, have given an undertaking that interest of creditors will be protected. In view of the undertaking, we direct the Transferee Company to make the payment admitted in the books of the First Petitioner Company to M/s AMI Constructions which is an MSME entity. We further direct the Transferee Company to also consider releasing the security deducted from the bill that has given rise to the difference in the amount claimed and the amount admitted.
24. No further objections have been received by the Tribunal opposing the Company Scheme Petition.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

25. It has been submitted that no investigation proceedings are pending against the Petitioner Companies under sections 210-217, 219, 220, 223, 224, 225, 226 & 227 of the Companies Act, 2013. Further, no winding up petition is pending before the Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016.
26. The Statutory Auditors of the Transferee Company have examined the Scheme in terms of provisions of Sections 230-232 and certified that the accounting treatment contained in the Scheme is in compliance with the applicable accounting standards notified by the Central Government under the Companies Act, 2013.
27. The shareholders and Creditors of the Petitioner Companies are the best judges of their interest. Their decision should not be ordinarily interfered with by the Tribunal as per the decision of Hon'ble Supreme Court in **Miheer H. Mafatlal vs. Mafatlal Industries Ltd [JT 1996 (8) 205]** wherein it was held as follows:
- “It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the usefulness and propriety of the scheme by supporting it by the requisite majority vote.”*
28. From the material on record, the Scheme to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
29. In view of the foregoing, upon considering the approval accorded by the members of the Petitioner Companies to the proposed Scheme, and the affidavits filed by the Regional Director, the rejoinder and undertakings of the Petitioner Companies and the report of the Official Liquidator and

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

the reply of the Petitioner Companies thereto, there appears to be no impediment in sanctioning the present Scheme.

30. Consequently, sanction is hereby **granted** to the Scheme under Sections 230 to 232 of the Companies Act, 2013, subject to the compliance with the directions given in Paragraph 23 above, with the following directions:

- a) All the Transferor Companies shall be dissolved without winding up.
- b) While approving the Scheme, we clarify that this Order should not, in any way, be construed as an Order granting exemption from payment of stamp duty, taxes or other charges, if any, and payment in accordance with law or in respect of any permission or compliance with other requirements which may be specifically required under any law.
- c) All the employees of the Transferor Companies in service, on the date immediately preceding the date on which the Scheme takes effect i.e. the Effective Date, shall become the employees of the Transferee Company on such date, without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the concerned Transferor Company on the said date.
- d) Any proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- e) All the properties, rights, liabilities, duties and powers of the Transferor Companies, be transferred without further act or deed,

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

C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

to the Transferee Company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company.

- f) The Income Tax Department will be at liberty to examine the aspect of any tax payable because of this scheme and it shall be open to the income tax authorities to take necessary action as permissible under the Income Tax Law.
- g) The Registrar of Companies is entitled to proceed against the Transferee Company for violation/offences committed by Transferor Companies, if any.
- h) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the Certified copy of the Order from the Registry.
- i) Certified copy of this Order be also submitted to all statutory authorities, and also to M/s AMI Constructions.
- j) The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the Certified copy of the Order from the Registry.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- III, MUMBAI BENCH
C.P. (CAA) No. 27/MB/C-III/2023 along with C.A. 335/MB/2023
CONNECTED WITH C.A. (CAA) No. 225/MB/C-III/2022

k) All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

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

m) Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.

31. Ordered accordingly and the CP(CAA)/27/MB/2023 along with CA/MB/335 in CA(CAA)/225/MB/2022 stands **disposed of**.

Sd/-
Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-
Lakshmi Gurung
Member (Judicial)