



NEPTUNE EXPORTS LTD.

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Date: 16th March, 2022

CIN : L51909WB1982PLC034494

www.neptuneexports.co.in

To

The Secretary

Department of Corporate Services

BSE Limited

P.J. Towers, Dalal Street,

Mumbai - 400001

The Secretary

The Calcutta Stock Exchange Limited

7, Lyons Range,

Kolkata - 700001

Sub: Pronouncement of Order by the Hon'ble National Company Law Tribunal, Kolkata Bench in the matter of Scheme of Amalgamation of (a) Tea Time Limited (b) Orient International Limited (c) Neptune Exports Limited and (d) Northern Projects Limited with Hindusthan Udyog Limited

Dear Sir,

This is to inform you that the Hon'ble National Company Law Tribunal, Kolkata Bench ("NCLT") has pronounced an Order dated 9th March, 2022 (received by us on 15th March, 2022), approving the aforesaid Scheme of Amalgamation.

The copy of the Order as available on the website of NCLT is enclosed herewith.

This disclosure is being made in terms of Regulation 30 of SEBI (LODR) Regulations, 2015 and the same is for your information and records.

Thanking you.

Yours Faithfully,

FOR NEPTUNE EXPORTS LIMITED


DIRECTOR/AUTHORISED SIGNATORY

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CP (CAA) No. 181/KB/2021

connected with

CA (CAA) No.13/KB/2021

In the matter of

A Company Petition filed under sections 230(1) and 232(1) of the Companies Act, 2013.

And

In the matter of

Tea Time Limited [CIN: L01132WB1979PLC032246], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Trinity Plaza, 3rd floor, 84/1A, Topsia Road (South), Kolkata-700046.

...Transferor Company No.1

And

Orient International Limited [CIN:L27310WB1981PLC034139], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Trinity Plaza, 3rd floor, 84/1A, Topsia Road (South), Kolkata-700046.

...Transferor Company No.2

And

Neptune Exports Limited [CIN:L51909WB1982PLC034494], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Trinity Plaza, 3rd floor, 84/1A, Topsia Road (South), Kolkata-700046.

...Transferor Company No.3

And

Northern Projects Limited [CIN:L45400WB1983PLC035987], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Trinity Plaza, 3rd floor, 84/1A, Topsia Road (South), Kolkata-700046.

...Transferor Company No.4

And

Hindusthan Udyog Limited [CIN:L27120WB1947PLC015767], a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Trinity Plaza, 3rd floor, 84/1A, Topsia Road (South), Kolkata-700046.

...Transferee Company

And

1. Tea Time Limited
2. Orient International Limited
3. Neptune Exports Limited
4. Northern Projects Limited
5. Hindusthan Udyog Limited

...Petitioners

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

Date of hearing: 03.03..2022

Date of Pronouncement: 09.03.2022

Coram:

Shri Rajasekhar V.K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances:

For Petitioners

: Mr. D.N. Sharma, Advocate

Mr. Orijit Chatterjee, Advocate

Ms. Swati Dalmia, Advocate

Ms. Ojasa Arya, Advocate

Mr. Shubham Raj, Advocate

ORDER

Per: Balraj Joshi, Member (Technical)

1. This court convened *via* video conference.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (**'Act'**) for sanction of the Scheme of Amalgamation of **Tea Time Limited** ('Transferor Company No.1'), **Orient International Limited** ('Transferor Company No.2'), **Neptune Exports Limited** ('Transferor Company No.3') and **Northern Projects Limited** ('Transferor Company No.4') with **Hindusthan Udyog Limited** ('Transferee Company'), whereby and where under the Transferor Companies are proposed to be amalgamated with the Transferee Company and the entire undertaking of the Transferor Companies are proposed to be transferred to and vested in the Transferee Company from the Appointed Date, *viz.*, **01.04.2019** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (**'Scheme'**).
3. The Petition has now come up for final hearing. Counsel for the Applicants submits as follows: -
 - a. The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Companies at their meetings held on 21.03.2020.
 - b. The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, *inter alia*, as follows:-

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

- i. The amalgamation will enable pooling of resource of the companies involved in the amalgamation to their common advantage, resulting in more productive utilization of such resources, cost and operational efficiencies which would be beneficial for all stakeholders.
- ii. The amalgamation would result in the creation of a Transferee Company with larger asset base and net worth with strong financials enabling further growth and development of the Transferee Company and enable it to withstand with the growing competition in the market scenario.
- iii. The proposed amalgamation will result in reduction in overhead and other expenses, reduction in administrative and procedural work and eliminate duplication of work and will enable the companies concerned to effect internal economies and optimize productivity.
- iv. If the proposed amalgamation comes into effect then it will strengthen the credibility of the Transferee Company with the financial institutions, banks and general public and which would eventually benefit the shareholders of the Transferee Company and the Transferor Companies.
- v. There is no likelihood that interest of any shareholder or creditor of any of the Transferor Companies or the Transferee Company would be prejudiced as a result of the Scheme. The Scheme of Arrangement/Amalgamation will not impose any additional burden on the members of the Transferor Companies or the Transferee Company.
- vi. The proposed Scheme will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources of the companies concerned and formation of a larger and stronger company having greater capacity for conducting its operations and business more effectively and efficiently.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

- vii. The merger will result in better and efficient management, control and running of the businesses, attain operational efficiencies, cost competitiveness and create synergies and capitalize on the growth opportunities to the fullest extent.
 - viii. The said Scheme will result in formation of a larger company with larger resources and financial base resulting in optimum growth and development of the businesses of the companies concerned and exploitation of the potential thereof. The said Scheme will enable the undertakings and businesses of the companies concerned to obtain greater facilities possessed and enjoyed by one large company compared to a number of small companies for raising capital, securing and conducting trade on favourable terms and other benefits.
 - ix. The merger will improve and consolidate internal controls and functional integration at various levels of the organisation such as information technology, human resources, finance, legal and general management leading to an efficient organization capable of responding swiftly to volatile and rapidly changing market scenarios.
 - x. The merger will enable seamless access to strong corporate relationships and other intangible benefits of the companies concerned built up over decades of experience, enhanced scale of operations and sharper focus and ultimately improve returns to create long term sustainable value for all stakeholders.
 - xi. The Scheme is for the benefit of its shareholders, employees and all stakeholders.
- c. The Statutory Auditors of the Petitioner Companies have by their certificates dated 20.03.2020, and 21.03.2020 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
 - d. No proceedings are pending under sections 210 to 227 of the Companies Act, 2013 against the Petitioner Companies.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

- e. The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Vikash Goel, Registered Valuers [IBBI/RV/01/2018/10339]. Further, Finshore Management Services Limited has also confirmed that the said ratio is fair by their fairness opinion thereon.
- f. The shares of the Petitioner Nos.1, 3, 4 and 5 are listed on the Bombay Stock Exchange and the Calcutta Stock Exchange. The shares of the Petitioner No.2 are listed on the Delhi Stock Exchange and the Calcutta Stock Exchange.
- g. In compliance with Securities and Exchange Board of India ('SEBI') Circular dated 10th March, 2017 on Schemes of Arrangement, as amended from to time ('SEBI Circular'), the said Petitioner(s) duly filed the Scheme with the said Stock Exchanges for their approval to the same. The Bombay Stock Exchange by its letters dated 13.11.2020 and the Calcutta Stock Exchange by its letters dated 20.11.2020 after receiving comments from SEBI, have confirmed they have '*no adverse observation*' on the Scheme.
- h. The Petitioner No. 4 is a Non-Banking Financial Company registered with the Reserve Bank of India vide Certificate of Registration dated May 16, 1998 bearing registration no.05.02409 and has obtained a '*no objection certificate*' dated 3.12.2020 from the Reserve Bank of India with regard to the proposed Scheme.
- i. By an order dated 22.02.2021 in **Company Application (CAA) No.13/KB/2021**, this Tribunal made the following directions with regard to the meetings of shareholders and creditors under section 230(1) read with section 232(1) of the Act:-
 - i. *“Meetings dispensed: Meeting of Preference Shareholder and Unsecured Creditors of the Applicant No.5 are dispensed with under section 230(1) read with section 232(1) of the Act.*
 - ii. *However, the Tribunal hereby directs the Transferee Company to issue notice to all of its unsecured creditors having debt outstanding of a value more than Rs.13,00,000/- (which represents 91.71% of value of*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

- the total unsecured creditors of the Applicant Company No.5) as per the list of unsecured creditors at Annexure AB at pages 743 to 746 of Volume V of the application, under section 230(3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and Copy of such representation shall simultaneously be served upon the Transferee Company. Objections, if any, will be heard at the time of final hearing of the connected petitions for sanction of the Scheme. There is no requirement of issuing notices to the unsecured creditors of the Transferee Company/Applicant No.5 Company having a debt of less than Rs.13,00,000/-.*
- iii. In view of the fact that the Applicant Companies have no Secured Creditors, as certified by the Statutory Auditors of the Applicant Companies, the question of holding and conducting the meeting of Secured Creditors of the Applicant Companies does not arise.*
- iv. In view of the fact that the Applicant Company Nos.1 to 4 have no Unsecured Creditors, as certified by the statutory Auditors of the Applicant Company Nos. 1 to 4, the question of holding and conducting the meeting of Unsecured Creditors of the Applicant Company Nos. 1 to 4 does not arise.*
- v. Meetings to be held | Date and Times: The following meeting(s) shall be convened and held at the following times on 21st May, 2021 (Friday) for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification: -*
- a. Meeting of Equity Shareholders of Applicant No.1 at 10 A.M.*
 - b. Meeting of Equity Shareholders of Applicant No.2 at 11 A.M.*
 - c. Meeting of Equity Shareholders of Applicant No.3 at 12 Noon.*
 - d. Meeting of Equity Shareholders of Applicant No.4 at 1 P.M.*
 - e. Meeting of Equity Shareholders of Applicant No.5 at 2 P.M.*
- In the event any meeting, as aforesaid, spills over and is concluded after the time fixed for commencement of the succeeding meeting, such*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

succeeding meeting shall be held immediately after such conclusion of the prior meeting.”

- j. The Learned Counsel appearing for the Petitioners submits that due to the rise in second wave of Covid-19 pandemic, and the lockdown imposed due to it by the State of West Bengal which directed the private establishments to remain closed, the meetings as directed vide the aforesaid order could not be convened despite advertisements being published on 11.04.2021 and notices being served upon the unsecured creditors of the Transferee Company having debt outstanding of a value more than Rs.13,00,000/-.
- k. The Learned Counsel appearing for the Petitioners submits that because of the inability to hold and convene the meeting due to the pandemic and the resultant restrictions, the Petitioners published another advertisement dated 20.05.2021 in the aforementioned newspapers intimating the postponement of the aforesaid meetings.
- l. On 22.06.2021, the Petitioner Companies filed an application bearing CA No. 100/KB/2021 praying for directions to hold and convene the meeting and to issue notice and publications in that regard, the Learned Counsel appearing for the Petitioners submits.
- m. The application bearing CA No. 100/KB/2021 was allowed by this Tribunal vide its order dated 05.08.2021 with direction to hold meeting of Equity Shareholders on 16.09.2021 and that all other directions given in earlier order dated 22.02.2021 for convening and holding the meetings shall remain in force.
- n. Pursuant to the said orders dated 05.08.2021 in Company Application No. 100/KB/2021 read with the order dated 22.02.2021 in Company Application (CAA) No.13/KB/2021, that the said meetings were duly held on 16.09.2021 as directed. The said meetings duly approved the Scheme by the requisite majority.
- o. Consequently, the Petitioner Companies presented the instant petition for sanction of the Scheme. By an order dated 30.11.2021 the instant petition was admitted by this Tribunal and fixed for hearing on 24.01.2022 upon

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

issuance of notices to the Statutory/Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 05.08.2021, the Petitioner Companies have duly served such notices on the Regional Director, Eastern Region, Kolkata, Registrar of Companies, Kolkata, Official Liquidator, Ministry of Corporate Affairs, Kolkata, Securities and Exchange Board of India, Camac Street, Elgin, Kolkata, Bombay Stock Exchange, Mumbai, Calcutta Stock Exchange, Kolkata, Reserve Bank of India and Assessing Officer, Respective income tax authorities under respective circles on 06.12.2021 and 07.12.2021. The Petitioner(s) have also published such advertisements once each in the *Financial Express* and *Aajkal* in their respective issues dated 17.12.2021. An affidavit of compliance in this regard has also been filed by them on 14.01.2022.

- p. All statutory formalities requisite for obtaining the sanction of the Scheme have been duly complied with by the Petitioner Companies. The Scheme has been made bona fide and is in the interest of all concerned
4. Pursuant to the said advertisements and notices, Official Liquidator, Calcutta High Court, Kolkata, and the Regional Director, Ministry of Corporate Affairs, Kolkata (*'RD'*), have filed their representations before this Tribunal.
5. The Official Liquidator has filed his report dated 24.12.2021 and concluded as under:-

"8. That the Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

...

10. That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable."

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

6. The RD has filed his report dated 21.01.2022 (***RD affidavit***) which has been dealt with by the Petitioners by their rejoinder affidavit dated 21.02.2022 (***rejoinder***). The observations of the RD and responses of the Petitioner(s) are summarized as under:-

(a) Paragraph No.2 (a) of RD Affidavit:

That it is submitted that on examination of the report of the Registrar of Companies, West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. The petitioner companies are also up-dated in filing their statutory returns.

Paragraph No.3 of rejoinder

Since the contents of paragraph 2(a) of the reply affidavit filed by the Ld. Regional Director are a matter of record, therefore, need no reply.

(b) Paragraph No.2 (b) of RD Affidavit:

The appointed date stated in the Scheme is 1st April 2019. In terms of the Circular no. 09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, "where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the appointed date is significantly ante dated beyond a year from the date of filing. The justification for the same would have to be specifically brought out in the scheme and it should not be against public interest" It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before this Tribunal within a year from 1st April 2019. If the application for the scheme was filed with the Tribunal after more than one year from the appointed date, this Tribunal may kindly direct the Applicant to bring out the justification for the appointed date being more than one year before date of filing of the application for the scheme, in the scheme according to the Circular.

Paragraph No.4 of rejoinder

The Appointed Date indicated in the proposed scheme of amalgamation is 1st April, 2019, and the application bearing C.A. (CAA) No. 13/KB/2021

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

had been filed by the Petitioner Companies on 25th January, 2021. The justification for such delay is provided below and such delay is not against public interest: -

- a) The Valuation Report ascertaining the share exchange ratio with respect to the proposed Scheme was prepared by the Registered Valuer, namely Vikash Goel on 20th March 2020 based on the Audited Financials of Petitioner Companies for the year ending 31st March, 2019 *i.e.*, just one day preceding the Appointed Date.
- b) The Scheme of Amalgamation was finalised and approved by the respective Board of Directors of the Petitioner Companies on 21st March 2020. At that juncture, the appointed date for the proposed scheme has been determined as the first day of that financial year *i.e.*, 1st April 2019.
- c) Immediately thereafter, on account of the first wave of Covid-19 pandemic for a considerable period all work and activities had come to a standstill. The same led to an unavoidable delay in procuring the no-objection certificates from the concerned stock exchanges wherein the Petitioner Companies had been listed. The no-objection certificate/ observation letters were ultimately received by the Petitioner Companies on 13th November, 2020 and 20th November, 2020.
- d) It is pertinent to mention that Petitioner Company No.4 is an NBFC registered with the Reserve Bank of India. Accordingly, prior approval from the Reserve Bank of India is also required to be obtained before filing an application with the concerned authorities. Petitioner Company No.4/Northern Projects Limited obtained such approval from the Reserve Bank of India by its letter dated 3rd December, 2020.
- e) Immediately after obtaining the no-objection certificates/observation letters from the concerned authorities, on 25th January, 2021 the Petitioner Companies filed an application bearing C.A. (CAA) No.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

13/KB/2021 before the Tribunal seeking necessary direction for convening meetings of the shareholders of the Petitioner Companies.

(c) Paragraph No 2(c) of RD Affidavit

It is submitted that all the Petitioner Companies including the Transferee Company namely, M/s Hindusthan Udyog Limited are listed Companies BSE and CSE. The BSE and the CSE have issued their observation letter regarding the draft Scheme of Amalgamation between the petitioner Companies.

Paragraph No.5 of rejoinder:

Since the contents of paragraph 2(c) of the reply affidavit filed by the Ld. Regional Director are a matter of record, therefore, need no reply.

(d) Paragraph No 2(d) of RD Affidavit

The Petitioner Company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013.

Paragraph No.6 of rejoinder:

Clause 10(i) of the Scheme of Amalgamation [annexed at pgs. 43 -72, Volume I of the Petition relevant clause at pg. 66] provides that upon the Scheme becoming effective, the Authorised Share Capital of each of the Transferor Companies will get merged with that of the Transferee Company and, any additional fees will be borne by the Transferee Company after setting off the fees paid by the Transferor Companies on their respective Authorised Share Capital. Necessary provisioning in compliance with section 232(3)(i) of the Companies Act, 2013 has been provided for in the scheme which has been duly approved by the Board of Directors and shareholders of the Petitioner Companies. However, the Petitioner Companies once again hereby undertake that the Petitioner Companies would comply with the provisions of section 232(3)(i) of the Companies Act, 2013

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

(e) Paragraph No. 2(e) of RD Affidavit:

The Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

Paragraph No.7 of rejoinder

Petitioner Companies undertake to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to the Transferee Company upon the Scheme of Amalgamation becoming effective.

(f) Paragraph No. 2(f) of RD Affidavit:

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' such as AS-5 or IND- AS-8 etc.

Paragraph No.8 of rejoinder:

In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND-AS-8 etc.

(g) Paragraph No. 2(g) of RD Affidavit:

The 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 Companies Act 2013 in meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.

Paragraph No.9 of rejoinder:

Paragraph 26 at page 39 of the underlying Company Petition contains the submission that the resolution approving the scheme of amalgamation has been passed by the $\frac{3}{4}$ th majority. The said underlying Company Petition is accompanied by an affidavit. However, with abundant precaution, the deponent, affirms that the Scheme of Amalgamation has been approved by

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

the requisite majority of members as per section 230(6) of the Companies Act, 2013 in the meetings duly held in terms of section 230(1) read with section 230(3)-(5) of the said Act and the minutes are annexed with the underlying Company Petition at pgs. 1392 – 1420, Volume IX.

Inssofar as the undertaking with respect to the creditors is concerned, no meeting of the creditors had taken place, since the requirement to convene and hold such meetings was dispensed with by this Tribunal vide its order dated 5th August 2021 [@ pgs. 950-959, Volume VI of the petition] read with the order dated 22nd February 2021 [@ pgs. 728-736, Volume V of the petition]. Furthermore, the Tribunal by its order dated 5th August, 2021 directed the Transferee Company to issue notices to its unsecured creditors having debt outstanding of a value more than Rs. 13,00,000/- (which represent 93.26% of value of the total unsecured creditors of the Petitioner Company No. 5) under section 230(3) of the Companies Act, 2013. The deponent states that the Petitioner Company No. 5/ Transferee Company had issued notices dated 14th August, 2021 to its unsecured creditors in compliance with the aforesaid order and an affidavit dated 1st September, 2021 confirming the same has also been filed in this regard [@ pgs. 960-980, Volume – VI of the Petition]

- (h) Paragraph No. 2(h) of RD Affidavit: The Tribunal may kindly direct the Petitioners 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.

Paragraph No.10 of rejoinder:

The deponent undertakes that the Scheme of Amalgamation enclosed with the Company Application and the Scheme of Amalgamation enclosed with the Company Petition are one and the same. He further undertook that there have been no changes or discrepancies made in the Scheme of Amalgamation filed with the Company Application from that of the Scheme of Amalgamation filed with the Company Petition

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

- (i) Paragraph No. 2(i) of RD Affidavit: 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 the Amalgamation or arrangement. Further, the approval of the scheme by the 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 Company(s) concerned.

Paragraph No.11 of rejoinder:

The Petitioner Companies had issued notices under section 230(5) of the Companies Act, 2013 along with all the accompanying documents including a copy of the Scheme and statement under the provisions of the Companies Act, 2013 to the Ld. Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; Registrar of Companies, Kolkata; Official Liquidator, Calcutta High Court at Kolkata; Securities Exchange Board of India; Income tax department; Reserve Bank of India (as applicable); and Stock Exchanges where the shares of the concerned Petitioner Companies are listed. The notices have been issued by the Petitioner Companies on the following dates and an affidavit affirming the same has been filed by the Petitioner Companies:-

- a. Notice dated 5th April, 2021 issued by the Petitioner Companies to all statutory authorities mentioned above pursuant to the order dated 22nd February, 2021 passed by this Tribunal in C.A. (CAA)No. 13/KB/2021 and an affidavit dated 13th May, 2021 confirming the aforesaid has been filed in this regard.
- b. Notice dated 12th August, 2021 issued by the Petitioner Companies to all statutory authorities mentioned above pursuant to the order dated 5th August, 2021 passed by this Tribunal in COMP. APPL/100(KB)2021 and an affidavit dated 1st September, 2021 confirming the aforesaid has been filed in this regard.
- c. Notice dated 4th December, 2021 issued by the Petitioner Companies to all statutory authorities mentioned above pursuant to the order

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

dated 30th November, 2021 passed by this Tribunal in C.P. (CAA) No. 181/KB/2021 connected with CA (CAA) No. 13/KB/2021 and C.A. No. 100/KB/2021 and an affidavit dated 14th January, 2022 confirming the aforesaid has been filed in this regard

(j) Paragraph No. 2(j) & (k) of RD Affidavit:

The Transferor companies, Tea Time Limited, Neptune Exports Limited and Company, Northern Projects Limited held more than 20% shares of Bharat Oil & Chemical Industries Limited as on 31.3.2016, 31.3.2017, 31.3.2018, 31.3.2019, 31.3.2020 and 31.3.2021. however, they have not filed the consolidated financial statement which is contrary to the provisions of section 137(r) read with section 129(3) Companies Act 2013, rendering the financial statement filed as incomplete. The companies should file the correct and complete set of financial statements of the said years before the merger, since, after merger, the said companies will become non-active on MCA portal and they would plead that

Paragraph No.12 of rejoinder:

The Consolidated Financial Statements of (i). Tea Time Limited and Bharat Oil & Chemical Industries Limited for FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21, (ii). Neptune Exports Limited and Bharat Oil & Chemical Industries Limited for FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21, and (iii). Northern Projects Limited and Bharat Oil & Chemical Industries Limited for FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19, and FY 2019-20 were not filed by the aforesaid companies as the concerned Petitioner Companies were under the bonafide impression that this was not required because there was no operation reported in Bharat Oil & Chemical Industries Limited during the aforesaid financial years. However, the Petitioner Companies undertake and are ready and willing to resolve the issue and pay any additional fees/charges as may be levied by the Registrar of Companies in accordance with the law.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

(k) Paragraph No. 2(l) of RD Affidavit:

The Transferor Company, Northern Projects Limited has not filed its financial statement for 2019-20 as yet although the due date for filing the same under section 137 of the Companies Act, 2013 elapsed long back. The company is in running default. Further in absence of the latest financial statement, no observation can be drawn by this deponent on the state of affairs of the company.

Paragraph No.13 of rejoinder:

The Financial Statements of Northern Projects Limited for the financial year 2019-20 were filed timely through Form AOC-4 NBFC (IND-AS) on 20th October 2020 vide SRN: R67868943. The copy of the financial statement of Northern Projects Limited for the financial year 2019-20, Form AOC-4 NBFC (IND-AS) dated 20th October 2020 along with the SRN proving the filing of the same are annexed with the rejoinder affidavit.

(l) Paragraph No. 2(m) of RD Affidavit:

The Transferor companies, Tea Time Limited, Neptune Exports Limited and Northern Projects Limited did not disclose the particulars of related party transactions in the Notes on Accounts in the financial statements for 2020-21 and earlier years although in the Auditors' Report it was stated that such disclosure is made in the Notes on Accounts.

Paragraph No.14 of rejoinder:

The Transferor Companies namely Tea Time Limited, Neptune Exports Limited and Northern Projects Limited have disclosed the particulars of related party transactions in the notes on accounts in the Financial Statements for the financial year 2020-21; the same are reflected from note 17, note 19 and note 17(c), respectively, of the notes on accounts in the Financial Statements for the financial year 2020-21 of Tea Time Limited, Neptune Exports Limited and Northern Projects Limited, respectively.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

(m) Paragraph No. 2(n) of RD Affidavit:

Company Secretaries of the Transferor companies, Tea Time Limited, Neptune Exports Limited and Northern Projects Limited resigned as follows:-

- i) Tea Time Ltd- Ankita Agarwal resigned on 31.03.2021
- ii) Neptune Exports Ltd- Rashmi Singh Yadav resigned on 15.03.2021
- iii) Orient International Ltd- Narayan Baheti resigned on 09.04.2021
- iv) Northern Projects Ltd- Ranu Dey Talukdar resigned on 28.02.2021

The companies are mandated to have Whole Time Company Secretaries in terms of section 203 of the Companies Act, 2013 but all these companies have been avoiding having Company Secretaries for many months and now proceeding to get merged with the Transferee Company to drop curtain on the serious running violation. The companies are liable for penal consequences along with their officers under section 203(5) of the Companies Act 2013. Hence before completion of Adjudication proceedings under section 454 of the Companies Act 2013 the merger may be kept in abeyance.

Paragraph No.15 of rejoinder:

Although the Company Secretaries of the Transferor Companies namely, Tea Time Limited, Neptune Exports Limited, Orient International Limited, and Northern Projects Limited had resigned on 31st March 2021, 15th March 2021, 9th April 2021, and 28th February 2021, respectively, the said casual vacancy created on the resignation of company secretaries for the aforesaid four companies were filled in by the Board of Directors of the respective companies within 6 (six) months in terms of Section 203(4) of the Companies Act, 2013 in the following manner: -

- a. For Tea Time Limited, Ms. Harshita Changlani was appointed with effect from 23rd September 2021.
- b. For Neptune Exports Limited, Ms. Bhagyashree Hirawat was appointed with effect from 1st September 2021.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021

- c. For Orient International Limited, Ms. Somya Chaturvedi was appointed with effect from 7th October 2021.
- d. For Northern Projects Limited Ms. Neha Mehra was appointed with effect from 12th August, 2021.

It is pertinent to mention that the details of the resignation and appointment of the aforementioned Company Secretaries were also filed with the Registrar of Companies. Therefore, there is no violation by the Petitioner Companies that warrant adjudication under section 454 of the Companies Act, 2013.

(n) Paragraph No. 2(o) of RD Affidavit:

The Transferor Company, Northern Projects Limited did not file its financial statements for 2015-16, 2016-17, 2017-18, 2018-19 in XBRL format violating Rule 12(2) of The Companies (Accounts) Rules 2014 and The Companies (Filing of documents and forms in extensible business reporting language) Rules 2015. The company is liable for penal consequences along with its officers under section 203(5) of the Companies Act 2013. Hence before completion of Adjudication proceedings under section 454 of the Companies Act 2013 the merger may be kept in abeyance.

Paragraph No.16 of rejoinder:

The Transferor Company namely, Northern Projects Limited is an NBFC registered with the Reserve Bank of India. Therefore, in terms of the second proviso to Rule 3(1) of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 Northern Projects Limited is exempt from filing Financial Statements in XBRL Format under the said Rules. Considering the aforesaid, Northern Projects Limited or its officers are not liable for penal consequences under the provisions of the Companies Act, 2013 or otherwise.

(o) Paragraph No. 2(p) (q) and (r) of RD Affidavit:

The Transferor Company, Neptune Exports Ltd, reported in its balance sheet as at 31.3.2021 "Advance to others" Rs.980.50 lakhs and

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

“Receivables” Rs 126.65 lakhs summing up to Rs. 1107.15 lakhs which was 58% of the total assets of the company; the Transferor company, Orient International Ltd, reported in its balance sheet as at 31.3.2021 “other Advance” Rs.360.25 lakhs which was 58% of the total assets of the company; the Transferor company, Tea Time Ltd, reported in its balance sheet as at 31.3.2021 “other Advance” Rs.2077.25 lakhs which was 86% of the total assets of the company. But contrary to the provisions of schedule III to the Companies Act 2013 no disclosure of the nature of such advance and receivable was made. Consequently, not only provision of the Companies Act was violated, disclosure of crucial feature of the state of affairs of the company was concealed. As a result, this deponent is not in a position to have comprehensive observation regarding the state of affairs of the said companies for drawing up the representation under section 230(5) of the Companies Act 2013. Once the companies disclose the particulars of the said items this deponent can prepare the representation.

Paragraph No.17 of rejoinder:

The amounts mentioned under the head ‘Other Advance’ and/or ‘Other Receivables’ in the Balance Sheets for the Financial Year ending on 31.03.2021 of Tea Time Limited, Neptune Exports Limited, and Orient International Limited are in the nature of trade advances. It is submitted that the concerned Petitioner Companies have duly made proper disclosures in their Balance Sheets in respect of the amounts mentioned under the head ‘other advance’ and/or ‘Other Receivables’ in terms of schedule III of the Companies Act, 2013 in the following manner:-

- i. For Petitioner Company No.3 i.e., Neptune Exports Ltd. in Note No. 5 & Note No. 6 as follows:-

Note: 5: Non-Current: Loans and Deposits - As on 31st March, 2021

At amortised cost Unsecured, Considered Good	Amount in Rs.
Security Deposits	32,212
Advance to Others	98,050,000
Total	98,082,212

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

Note: 6: Other Non-Current Assets - As on 31st March, 2021

Unsecured, Considered Good	Amount in Rs.
Other Receivables	12,665,530
Total	12,665,530

- ii. For Petitioner Company No.2 *i.e.*, Orient International Limited in Note No. 4 as follows:-**Note: 4: Non-Current: Loans and Deposits -As on 31st March, 2021**

Unsecured, Considered Good	Amount in Rs.
Other Advances	36,025,000
Total	36,025,000

- iii. For Petitioner Company No.1, *i.e.*, Tea Time Limited in Note No. 4 as follows:

Note: 4 : Non-Current: Loans and Deposits – As on 31st March, 2021

<u>At amortised cost</u> Unsecured, Considered Good	Amount in Rs.
Other Advances	207,725,000
Total	207,725,000

- (p) Paragraph No. 2(s) of RD Affidavit:

It is submitted that the Transferor Company M/s Northern Projects Limited is registered with RBI as NBFC. The Reserve Bank of India vide its letter dated 03/12/2020 issued its approval/no objection to the proposed merger of the Company with Non-NBFC petitioner companies including transferee Company M/s Hindusthan Udyog Limited. However, it is stated in the said letter that the said approval is valid for six months from the date of issue of that letter *i.e.* six months from 03/12/2020.

Paragraph No.18 of rejoinder:

One of the Transferor Companies namely, Northern Projects Limited is registered as an NBFC with the Reserve Bank of India. The Reserve Bank of India vide its letter dated 3rd December 2020 conveyed its no-objection to the proposed Scheme of Amalgamation. The said no-objection was valid for six months from the date of issue of that said letter, the Company Application of first motion was, therefore, filed within eight weeks (*i.e.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

within six months) from the date of issue of the said no-objection from the Reserve Bank of India. Therefore, the date of issuance of the said no objection puts no embargo on the approval of the Scheme of Amalgamation.

Further, the Petitioner Companies have, once again, issued notices dated 5th April 2021, 12th August, 2021 and 4th December, 2021 under section 230(5) of the Companies Act, 2013 along with all the accompanying documents including a copy of the Scheme and statement under the provisions of the Companies Act, 2013 to the Reserve Bank of India. The Petitioner Companies have also written e-mails dated 16th December, 2021 and 22nd December 2021 to RBI for their representation, if any. However, the Petitioner Companies have received no representation from them on this behalf. The emails dated 16thDecember, 2021 and 22nd December 2021 sent to the Reserve Bank of India are part of rejoinder affidavit.

(q) Paragraph No. 2(t) of RD Affidavit:

It is submitted that this deponent has received some letters from the Income Tax Department stating therein some outstanding demand against the Petitioner Company namely M/s Tea Time Limited for 5(five) Assessment years 2009-10 u/s 143(la) for Rs.26,27,187/-, 2010-11 u/s 143(3) for Rs.9,37,820/-, 2014-15 u/s 143(la) for Rs.6,60,990/-, 2012-13 u/s 220(2) for Rs.22221- and 2012-13 u/s 271(l)(c) for Rs.9,78,521/- of the I T Act, 1961 and also stated unless and until the above demand paid by the Assessee, the Income Tax Department has objection for amalgamation of above Company. (Letter no. DCIT.Circle-4(1)/Kolkata/MCA/ 2021-22 dated 10/12/2021 and letter no. DCIT.Circle-4(1)/Kolkata/ MCA/2021-221158 dated 18/08/2021) and M/s Neptune Exports Limited for Rs.1,33,190/- for A.Y. 20 11-12 (letter no. DCIT.Circle 4(1)/Kolkata/MCA/ 2021-22 dated 101 121 202 1) both are Transferor Companies. However, one letter no. DCIT/ Circle-4(1)/Kolkata/MCA/202 1-22 dated 10/ 1212021 received in the matter of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

M/s Northern Projects Limited, wherein it is stated that as per their system record, no outstanding demands exist and therefore, they have no objection for amalgamation for the above company.

Paragraph No.19 of rejoinder:

Regarding the outstanding demand of Rs.1,33,190/- of Neptune Exports Limited for the AY 2011-12 [letter no. DCIT.Circle-4(1)/Kolkata/MCA/2021-22 dated 10th December, 2021], the same has been adjusted against the refund receivable by Neptune Exports Limited for AY 2017-18. In furtherance thereto, Neptune Exports Limited has duly responded to the Income Tax Authorities by its letter dated 31st January, 2022 confirming the aforesaid adjustment made by the Income Tax Authorities with regard to the outstanding demands for AY 2011-12. The orders received u/s 143(1) for said Assessment Years which shows adjustment of outstanding demand of Rs. 1,33,190 against Refund and the letter dated 31st January, 2022 issued by Neptune Exports Limited to the income tax authorities are on record.

With regard to the observation made by the Ld. Regional Director against the Petitioner/Transferor Company No.1, i.e., Tea Time Limited, it is humbly submitted that the pending demand, if any, will be continued against the Transferee Company in accordance with law as stated in clause 7.4 and 7.5 of the Scheme. As per clause 7.4 of the Scheme of Amalgamation, all the liabilities of the Transferor Companies shall become the liabilities of the Transferee Company. And in terms of clause 7.5 all the legal, taxation or other proceedings, whether civil or criminal by or against the Transferor Companies shall be continued and enforced by or against the Transferee Company as effectually and in the same manner and to the same state extent as if the same had been instituted by or against, as the case may be, the transferee company from the appointed date.

7. Heard submissions made by the Ld. Counsel appearing for the Petitioner Companies and the RD. Upon perusing the records and documents in the instant

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

proceedings and considering the submissions, we allow the petition and make the following orders:-

- (a) the Scheme of Amalgamation mentioned in paragraph I of the petition, being Annexure “A” hereto, is hereby sanctioned by this Tribunal with the Appointed Date fixed as 01.04.2019 (*‘Appointed Date’*) on **Tea Time Limited**, the Transferor Company No.1, **Orient International Limited**, the Transferor Company No.2, **Neptune Exports Limited**, the Transferor Company No.3, and **Northern Projects Limited**, the Transferor Company No.4 with **Hindusthan Udyog Limited** the Transferee Company, their respective shareholders and creditors and all concerned;
- (b) all the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;
- (c) all the debts, liabilities, duties, and obligations of the Transferor Companies be transferred from the said Appointed Date, without further act or deed to the Transferee Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties, and obligations of the Transferee Company;
- (d) the employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in clause 7.6 of the Scheme;
- (e) all proceedings and/or suits and/or appeals now pending by or against the Transferor Companies be continued by or against the Transferee Company, as provided in the Scheme;
- (f) The Transferee Company do without further application issue and allot to the shareholders of the Transferor Companies, the shares in the Transferee Company to which they are entitled in terms of the Scheme;

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH**

*In Re: Tea Time Limited and Others
CP (CAA) No. 181/KB/2021
Connected with CA (CAA) No.13/KB/2021*

- (g) leave is granted to the Petitioners to file the Schedule of Assets of the Transferor Companies in the form as prescribed in the Schedule to Form No.CAA7 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 within three weeks from the date of receiving a copy of this order;
- (h) The Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered, the Transferor Company shall be dissolved without winding up.
8. The Petitioners shall supply a legible printout of the Scheme and schedule of assets in an acceptable form to the Registry and the Registry will append such printout, after verification, to the certified copy of the order.
9. Company Petition (CAA) No.181/KB/2021 is disposed of accordingly.
10. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

The order is pronounced on 9th day of March, 2022.

SA, LRA