

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

**C.P. (CAA) No. 228 / KB /2021
Connected with
C.A. (CAA) No. 31/KB/2021**

In the Matter of the Companies Act, 2013 - Section 230(6) read with Section 232 (3)
AND

In the matter of:

Ambe Commotrade Private Limited (U51109WB2007PTC113270), a company incorporated under the provisions of Companies Act, 1956 on 09th February, 2007 and having its registered office at PS IXL, 3rd Floor Newtown Road, Unit No 305, P.O. Rajarhat, Gopalpur, Kolkata-700136 in the state of West Bengal.

Transferor Company No.1/Petitioner Company No.1

AND

In the matter of:

Ambey Apartment Private Limited (CIN U45400WB2007PTC115297), a company incorporated under the Companies Act, 1956 on 23rd April, 2007 and having its registered office at PS IXL, 3rd Floor Newtown Road, Unit No 305, P.O. Rajarhat, Gopalpur, Kolkata-700136 in the state of West Bengal.

Transferor Company No. 2/ Petitioner Company No.2

AND

In the matter of:

Ambey Complex Private Limited (CIN U45400WB2007PTC115299), a company incorporated under the Companies Act, 1956 on 23rd April, 2007 and having its registered office at PS IXL, 3rd Floor Newtown Road, Unit No 305, P.O. Rajarhat, Gopalpur, Kolkata-700136 in the state of West Bengal.

Transferor Company No. 3/ Petitioner Company No.3

AND

In the matter of:

Ambey Hirise Private Limited (CIN U45400WB2007PTC115261), a company incorporated under the Companies Act, 1956 on 19th April, 2007 and having its registered

office at PS IXL, 3rd Floor Newtown Road, Unit No 305, P.O. Rajarhat, Gopalpur, Kolkata-700136 in the state of West Bengal, within the aforesaid jurisdiction.

Transferor Company No. 4 /Petitioner Company No.4
AND

In the matter of:

Ambey Infratech Private Limited (CIN U70100WB2008PTC122855), a company incorporated under the Companies Act, 1956 on 20th February, 2008 and having its registered office at PS IXL, 3rdFloor Newtown Road, Unit No 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 5/Petitioner Company No.5
AND

In the matter of:

Ambey Plaza Private Limited (CIN U45400WB2007PTC115293), a company incorporated under the Companies Act, 1956 on 23rdApril, 2007 and having its registered office at PS IXL, 3rdFloor Newtown Road, Unit No 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 6/Petitioner Company No.6
AND

In the matter of:

Ambey Towers Private Limited (CIN U45400WB2007PTC115294), a company incorporated under the Companies Act, 1956 on 23rdApril, 2007 and having its registered office at PS IXL, 3rdFloor Newtown Road, Unit No 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal, within the aforesaid jurisdiction.

Transferor Company No. 7/Petitioner Company No.7
AND

In the matter of:

Aryavrat Apartment Private Limited (CIN U45400WB2007PTC115270), a company incorporated under the Companies Act, 1956 on 21stApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 8/Petitioner Company No.8

AND

In the matter of:

Aryavrat Enclave Private Limited(CIN U45400WB2007PTC115298), a company incorporated under the Companies Act, 1956 on 23rdApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 9/Petitioner Company No.9

AND

In the matter of:

Aryavrat Infrastructure Private Limited (CIN U45400WB2007PTC115296), a company incorporated under the Companies Act, 1956 on 23rdApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 10/Petitioner Company No.10

AND

In the matter of:

Aryavrat Plaza Private Limited(CIN U45400WB2007PTC115295), a company incorporated under the Companies Act, 1956 on 23rdApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 11/Petitioner Company No.11

AND

In the matter of:

Jainex Properties Private Limited (CIN U70101WB1990PTC049466), a company incorporated under the Companies Act, 1956 on 19th July, 1990 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 12/Petitioner Company No.12

AND

In the matter of:

PratibhaNiketan Private Limited(CIN U45200WB2007PTC113882), a company incorporated under the Companies Act, 1956 on 5th March, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 13/Petitioner Company No.13

AND

In the matter of:

Simplex Apartment Private Limited(CIN U45400WB2007PTC115260), a company incorporated under the Companies Act, 1956 on 19thApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 14/Petitioner Company No.14

AND

In the matter of:

Simplex Enclave Private Limited(CIN U45400WB2007PTC115239), a company incorporated under the Companies Act, 1956 on 18th April, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 15/Petitioner Company No.15

AND

In the matter of:

Simplex Mansion Private Limited(CIN U45400WB2007PTC115242), a company incorporated under the Companies Act, 1956 on 18thApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 16/Petitioner Company No.16

AND

In the matter of:

Simplex Niketan Private Limited(CIN U45400WB2007PTC115240), a company incorporated under the Companies Act, 1956 on 18thApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 17/Petitioner Company No.17

AND

In the matter of:

Simplex Nirman Private Limited(CIN U45400WB2007PTC115230), a company incorporated under the Companies Act, 1956 on 18thApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 18/Petitioner Company No.18

AND

In the matter of:

Simplex Towers Private Limited(CIN U45400WB2007PTC115241), a company incorporated under the Companies Act, 1956 on 18thApril, 2007 and having its registered office at PS IXL-3rdFloor, Newtown Road, Unit No. 305, P.O. Rajarhat Gopalpur Kolkata 700136 in the state of West Bengal.

Transferor Company No. 19/Petitioner Company No.19

AND

In the matter of:

Simplex Land & Housing Development Private Limited (CIN U45201WB1995PTC076123), a company incorporated under the Companies Act, 1956 on 21st December, 1995 and having its registered office at Eden House, 15 GangadharBabu lane, Room No-306, 3rd Floor,Kolkata-700012 in the state of West Bengal.

Transferee Company /Petitioner Company No.20

In the matter of:

1. Ambe Commotrade Private Limited

2. Ambey Apartment Private Limited

- 3. Ambey Complex Private Limited**
- 4. Ambey Hirise Private Limited**
- 5. Ambey Infratech Private Limited**
- 6. Ambey Plaza Private Limited**
- 7. Ambey Towers Private Limited**
- 8. Aryavrat Apartment Private Limited**
- 9. Aryavrat Enclave Private Limited**
- 10. Aryavrat Infrastructure Private Limited**
- 11. Aryavrat Plaza Private Limited**
- 12. Jainex Properties Private Limited**
- 13. Pratibha Niketan Private Limited**
- 14. Simplex Apartment Private Limited**
- 15. Simplex Enclave Private Limited**
- 16. Simplex Mansion Private Limited**
- 17. Simplex Niketan Private Limited**
- 18. Simplex Nirman Private Limited**
- 19. Simplex Towers Private Limited**
- 20. Simplex Land & Housing Development Private Limited**

. Petitioner(s)

Date of Hearing: 11/05/2022

Date of pronouncing the order: 20/05/2022

Coram:

Shri Rajasekhar V. K.

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Counsel on Record for the Petitioner(s):

1. Mr. Jishnu Choudhary, Advocate
2. Mr. Arani Guha, Advocate
3. Mr. Arun Kumar Khandelia, Practicing Company Secretary

For the Regional Director: Shri Harihar Sahoo, Joint Director

ORDER

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

1. The instant petition has been filed under Section 230 read with Section 232 of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of Ambe Commotrade Private Limited (Petitioner No. 1), Ambey Apartment Private Limited (Petitioner No. 2), Ambey Complex Private Limited (Petitioner No. 3), Ambey Hirise Private Limited (Petitioner No. 4), Ambey Infratech Private Limited (Petitioner No. 5), Ambey Plaza Private Limited (Petitioner No. 6), Ambey Towers Private Limited (Petitioner No. 7), Aryavrat Apartment Private Limited (Petitioner No. 8), Aryavrat Enclave Private Limited (Petitioner No. 9), Aryavrat Infrastructure Private Limited (Petitioner No. 10), Aryavrat Plaza Private Limited (Petitioner No. 11), Jainex Properties Private Limited (Petitioner No. 12), Pratibha Niketan Private Limited (Petitioner No. 13), Simplex Apartment Private Limited (Petitioner No. 14), Simplex Enclave Private Limited (Petitioner No. 15), Simplex Mansion Private Limited (Petitioner No. 16), Simplex Niketan Private Limited (Petitioner No. 17), Simplex Nirman Private Limited (Petitioner No. 18), Simplex Towers Private Limited (Petitioner No. 19) , hereinafter referred to as the Transferor Companies and Simplex Land & Housing Development Private Limited (hereinafter referred to as the Transferee Company and Petitioner No. 20)whereby and whereunder the Transferor Companies are proposed to be amalgamated with the Transferee Company from the Appointed Date, viz 01stApril, 2019 in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“Scheme”).

2. 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 Nos.1 to 20 at their meetings held between 20th June, 2020 to 24th June, 2020.

(b) The reasons that have necessitated and/or justified the said Scheme of Amalgamation are, inter alia, as follows:-

- I. The amalgamation in accordance with this Scheme will result in integration of the operations of the Petitioner Company No. 20 and the operational costs will be considerably reduced. The Petitioner Company No. 20 will be able to operate more economically and effectively resulting in better turnover and profits;
- II. Synergy of operations could be achieved and common facilities such as manpower, office space and other infrastructure could be better utilized, and duplication of facilities could be avoided resulting in optimum use of facilities to the advantage of the Petitioner Company No. 20;
- III. There will be better operational synergy in terms of procurement benefits, access to marketing networks/ customers, reduction of administrative work etc. and fundraising capabilities and opportunities of the Petitioner Company No. 20 will be comfortably enhanced, resulting into cost efficiency coupled with greater financial flexibility; and
- IV. Due to all the reasons stated above, the Petitioner Company No. 20 will be able to ensure better turnover and profits and would ultimately contribute substantially to the future business expansion and will be able to exploit the market to the fullest possible extent.

(c) The Statutory Auditor of the Transferee Company has by its certificate 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(s).

(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 Valuation Report thereon given by Mr. Anil Kumar Gupta, Registered Valuer(Securities or Financial Assets), bearing Registration No. IBBI/ RV/ 06/2019/11155.

(a) The shares of none of the Petitioner Companies are not listed on any of the stock exchanges.

(b) By an order dated 13th July, 2021 in Company Application (CAA) No.31/KB/2021, this Tribunal made the following directions with regard to meeting(s) of Shareholders and creditors under Section 230(1) [read with Section 232(1) of the Act]:-

(c) Meetings dispensed: Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.1, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.2, Meeting of the Equity Shareholders of the Applicant No.3, Meeting of the Equity Shareholders of the Applicant No.4, Meeting of the Equity Shareholders of the Applicant No.5, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.6, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.7, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.8, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.9, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.10, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.11, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.12, Meeting of the Equity Shareholders of the Applicant No.13, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.14, Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.15, Meeting of the Equity Shareholders of the Applicant No.16, Meeting of the Equity Shareholders of the Applicant No.17, Meeting of the Equity Shareholders of the Applicant No.18, Meeting of the Equity Shareholders of the Applicant No.19 and Meetings of the Equity Shareholders and Unsecured Creditors of the Applicant No.20 are dispensed with under Section 230(1) read with Section 232(1) of the Act.

(d) Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 13th July, 2021 the instant petition was admitted by this Tribunal and fixed for hearing on 01st February, 2022 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order, the Petitioner(s) have duly served such notices on the Official Liquidator, Ministry of Corporate Affairs, The Registrar of Companies (West Bengal), The Regional Director (Eastern Region), Income-Tax officer of the Transferor Companies and the Transferee Company, The Secretary, The Competition Commission of India on March 04, 2022. The Petitioner(s) have also published such advertisements once each in the Bengali Newspaper i.e., "Aajkaal" and in English Newspaper i.e., "Financial Express" on March 02, 2022. An affidavit of compliance in this regard has also been filed by them on 17.03.2022.

(e) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.

3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata ("RD") and the Official Liquidator, Kolkata ("OL") have filed their representations before this Tribunal.

4. The Official Liquidator has filed his report dated 05th April, 2022 and concluded as under:-

"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.

11. That in View of the submission made above the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case."

5. The RD has filed his reply affidavit dated 18th April, 2022, (“**RD affidavit**”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 26th April, 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:

It is submitted that on examination of the Report of the Registrar of Companies, West Bengal, it appears that the complaint and/ or representation regarding the proposed Scheme of Amalgamation has been received against the Petitioner Companies. Further, as per available records, all the Petitioner Companies are updated in filing their Statutory Returns for the year ended 31.03.2021.

Paragraph No. 1 of Rejoinder:

With reference to paragraph 2 (a & u), the said issue is a matter of records and therefore we do not have anything to reply in relation to this. Further, the Income Tax department has given No Objection with respect to Merger.

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

Appointed Date is 1st April 2019 which is much older and since all the Petitioner Companies have already filed subsequent Financial Statements upto the financial year ended 31/03/2021, this Appointed Date apparently lacks relevance to the Scheme, as it appears. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper, keeping in view the present circumstances.

Paragraph No. 2 of Rejoinder:

With reference to paragraph 2 (b), Clause No. 19(from scheme) of scheme specifically deals with the matter and whatever transactions may have taken place will be dealt accordingly & the same also does not violate any provision of law. We are not reproducing the provision for the sake of brevity, as the same is already been attach with the petition at Page No. 216.

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

Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. 3 of Rejoinder:

With reference to paragraph 2 (c), I wish to undertake that the transferee company shall pay the fees in terms of Section 232(3)(i) on post amalgamation period if any fees is payable and/or applicable. So far as the statement with regard to clubbing of Authorized share capital is concerned, the transferee company has prepared a statement showing clubbing of Authorized share capital. The Transferee Company further undertakes that in post amalgamation period if any fees is applicable and/or arises, the Applicant Companies shall pay the same.

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

That 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. 4 of Rejoinder:

With reference to paragraph 2 (d), I wish to undertake that the Transferee Company shall pay the Applicable Stamp Duty for the Transfer of the Immoveable Properties from the Transferor Companies to it.

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

The Hon'ble 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. 5 of Rejoinder:

With reference to paragraph 2 (e), the Applicant Companies undertake 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.

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

The Transferor company, Ambe Commotrade Private Limited, shows Long Term Borrowings of Rs. 1,14,11,07 as on 31.3.2021 in its financial statement for 2020-21. The loans are shown taken from SMR Nirman Pvt Ltd (Rs 30,69,973) and Aryavrat

Savings Unit Pvt Ltd (Rs 83,41,834). But in the financial statements of SMR Nirman Pvt Ltd and Aryavrat Savings Unit Pvt Ltd, it is shown that the company gave "short term loans and advances to Ambe Commotrade Pvt Ltd. Ambe Commotrade Pvt Ltd had utilized the loan to purchase lands as non-current investments. Since it is non-current investment Ambe Commotrade Pvt Ltd showed the source of funding as Long-Term Borrowing while it was in fact short term borrowing. The financial statement of Ambe Commotrade Pvt Ltd therefore is seriously flawed and incorrectly reported the state of affairs of the company. The scheme is therefore impacted.

Paragraph No. 6 of Rejoinder:

With reference to paragraph 2 (f), this is a very surprising observation of being “seriously flawed” and incorrectly reported without even mentioning the provision under which such reporting has treated as “flawed”. It is just a business transaction where complete disclosures have been made and the reporting head has no impact on the scheme under consideration.

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

The Transferor Company, Ambe Commotrade Private Limited allotted 8000 shares on 31.3.2007 to Aryavrat Savings Unit Limited at price Rs.10 plus premium Rs.40 per share and on 31.3.2013 allotted 2500 shares on 31.3.2007 to Aryavrat Savings Unit Limited at price Rs.10 plus premium Rs.70 per share. Ambe Commotrade Private Limited has been all along, including upto the Annual return as at 31.3.2021, showing that Aryavrat Savings Unit Limited has been holding 10,500 shares. But Aryavrat Savings Unit Limited, in its balance sheet as at 31.3.2010 showed that it was not holding any share in Ambe Commotrade Private Limited. Thereafter, in none of the balance sheets after 31.3.2010 of Aryavrat Savings Unit Limited disclosure regarding list of investments held as stock was made. The serious defect in the shareholding position of the Transferor Company should be clarified by the applicant.

Paragraph No. 7 of Rejoinder:

With reference to paragraph 2 (g), I wish to inform you that again no specific provision has been mentioned against which the non- availability of the list of

Investments can be considered as a violation. Further, Aryavrat Savings Unit Pvt. Ltd. being an NBFC, this is a part of its normal course of business.

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

The Transferor company, Ambe Commotrade Private Limited, took loan of Rs 26,50,000 in 2014-15 and took further loan in 2018-19 from SMR Nirman Pvt Ltd. Shri Raj Kumar Agarwal has been director of both Ambe Commotrade Pvt Ltd and SMR Nirman Pvt Ltd. As on 31.3.2021 the outstanding amount of the loan was Rs.30,69,973. The loan was given in violation of section 185 of the Companies Act 2013 which is a non compoundable offence. Through the merger curtain is sought to be dropped on the transgression of law, as it appears.

Paragraph No. 8 of Rejoinder:

With reference to paragraph 2 (h), we deny that it is a violation of section 185. However, in case the same is found to be a violation proceedings can be opened against the transferee company as per point 4.4 of the scheme.

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

The Transferor company, Ambey Apartment Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances of Rs.2 1,73,294/- which was about 70% of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature or the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as "erroneous" violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction.

However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

The financial statement for 2020-21, being the latest financial statement of the Transferor Company, Ambey Complex Private Limited, as has been filed in MCA portal under section 137 of the Companies Act 2013 vide SRN T55992861, is illegible in many parts and hence could not be read by this deponent. The company should first file legible copy of the financial statement in prescribed manner.

Paragraph No. 10 of Rejoinder:

With reference to paragraph 2 (j), the legible copy of the Financial Statement of Ambey Complex Pvt Ltd for the Financial year ended 31st March, 2021 is annexed herewith as Annexure B.

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

The Transferor Company, Ambey Infratech Pvt Ltd, in its financial statement for 2020-21 stated that it holds 12500 nos. shares of Vedanta Limited for Rs.20,14,158/- as on 31.3.2021. But in the Annual Return of Vedanta Limited (vide SRN T40613705) no shareholding of Ambey Infratech Pvt Ltd as on 31.3.2021 is shown. The Applicant should clarify the matter as it is of relevance to the scheme.

Paragraph No. 11 of Rejoinder:

With reference to paragraph 2 (k), the Company, Ambey Infratech Pvt Ltd, has shown its genuine investment and is unaware as to why the Vedanta Ltd. has not reflected the same in its Annual Return. However since the Appointed Date is 01st April, 2019 and the valuation has been done accordingly, hence this has no impact on the scheme.

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

The Transferor company, Ambey Plaza Pvt Ltd has stated in its Balance sheet as at 31.3.2021 that short term borrowing from related party, Ambey Mata Holdings Pvt Ltd, was Rs.18,84,411 as on 31.3.2021. But in the balance sheet as at 31.3.2021 of Ambey Mata Holdings Pvt Ltd no balance of outstanding loan to the transferor company, as a related party, was shown. The Applicant should clarify the matter as it is of relevance to the scheme.

Paragraph No. 12 of Rejoinder:

With reference to paragraph 2 (l), Ambey Mata Holdings Pvt Ltd has shown loans provided to related parties of an amount of Rs. 20,016,869, wherein the amount advanced to Ambey Plaza Pvt Ltd Rs. 18,84,411 is included and the balance Sheet of the companies have reflected that the said amount is short term in nature.

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

The Transferor company, Ambey Towers Pvt Ltd has stated in its balance sheet as at 31.3.2021 that long term borrowing from related party, Aryavrat Savings Unit Pvt Ltd, was Rs 19,03,367 as on 31.3.2021. But in the balance sheet as at 31.3.2021 of Aryavrat Savings Unit Pvt Ltd no balance of outstanding loan to the transferor company, as a related party, was shown. The Applicant should clarify the matter as it is of relevance to the scheme.

Paragraph No. 13 of Rejoinder:

With reference to paragraph 2 (m), Aryavrat Savings Unit Pvt Ltd has shown Short term unsecured loans provided to related parties of an amount of Rs. 22,022,592 wherein the amount advanced to Ambey Towers Pvt Ltd Rs. 19,03,367 is included and the balance Sheet of the companies have reflected that the said amount is short term in nature.

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

The transferor company, Aryavrat Enclave Pvt Ltd, in its. balance sheet as at 31.3.2021 showed borrowing from an NBFC as Rs.18,91,278. As on 31.3.2020 the said borrowing was of the amount of Rs.17,06,915. But no interest cost on such borrowing is reported in the Financial statement for 2020-21. Since loan from an NBFC cannot be free of interest in all practicality, the matter is of serious doubt. The Applicant should clarify the matter as it is of relevance to the scheme.

Paragraph No. 14 of Rejoinder:

With reference to paragraph 2 (n), the loan is from an NBFC bearing interest. The increase in amount is due to the interest added during the year, which could not be

paid due to loss in the Company. Further, TDS for the said interest has also been provisioned for in the books.

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

The Transferor company, Aryavrat Infrastructure Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances" of Rs.70,38,803/- which was about 66 % of the total equity and liabilities of the Company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature of the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as "erroneous" violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of "other loans & advances" of the above mentioned companies.

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

The Transferor company, Simplex Apartment Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances" of Rs.19,49,567/- which was about 43 % of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the

Act such disclosure was statutorily mandatory. Purpose of concealing the nature of the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as “erroneous” violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

The Transferor company, Simplex Enclave Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances" of Rs.22,36,613/- which was about 49 % of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature or the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as “erroneous” violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

The Transferor company, Simplex Mansion Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances" of Rs.17,60,013/- which was about 49 % of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature of the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as “erroneous” violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

The Transferor company, Simplex Niketan Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances of Rs.16,41,253/- which was about 47% of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule 111 to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature or the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these are queries of a similar nature and sought to be portrayed as “erroneous” violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

The Transferor company, Simplex Towers Private Limited, in its latest balance sheet as at 31.3.2021 showed Long Term Borrowing as "other loans and advances" of Rs.16,95,757/- which was about 68 % of the total equity and liabilities of the company, thereby being of enormous materiality in the state of affairs of the company, thereby having relevance to the scheme, of merger. But no disclosures, regarding nature of the said borrowings was provided in the balance sheet while according to schedule III to the Companies Act 2013 read with section 129 of the Act such disclosure was statutorily mandatory. Purpose of concealing the nature of the borrowing is not understandable and hence generates skepticism and suspicion.

Paragraph No. 9 of Rejoinder:

With reference to paragraph 2 (i, o, p, q, r, s, t), all these queries are of a similar nature and sought to be portrayed as “erroneous” violations. None of these companies mentioned in these points namely Ambey Apartment Pvt Ltd, Aryavrat Infrastructure Pvt Ltd, Simplex Apartment Pvt Ltd, Simplex Enclave Pvt Ltd, Simplex Mansion Pvt Ltd, Simplex Niketan Pvt Ltd, Simplex Towers Pvt Ltd. have failed to mention the amounts of loans & advances that were taken, thereby not hiding any financial transaction. However, for the sake of clarity we have attached the details of “other loans & advances” of the above mentioned companies.

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

It is submitted that the Income Tax Department vide its letters no. ITO/Ward-1 l(l)/Kol/Amalgam./2021-221402 and no. 410, 398. 390, 394, 414 and 422, all dated 10/09/2021 in respect of seven Transferor Companies (seven separate letter) stated that the they have no objection to the proposed scheme of amalgamation (Copies of these letters collectively marked as Annexure-I is enclosed herewith for perusal and ready deference.)

Paragraph No. 1 of Rejoinder:

With reference to paragraph 2 (a and u), the said issue is a matter of records and therefore we do not have anything to reply in relation to this. Further, the Income Tax department has given No Objection with respect to Merger.

6. Heard submissions made by the Ld Counsel appearing for the Petitioner and the Joint Director on behalf of the RD. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- a) the Scheme of Amalgamation mentioned in the petition, being Annexure "A1" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from 1st April, 2019("Appointed Date") on and Ambe Commotrade Private Limited (Petitioner No. 1), Ambey Apartment Private Limited (Petitioner No. 2), Ambey Complex Private Limited (Petitioner No. 3), Ambey Hirise Private Limited (Petitioner No. 4), Ambey Infratech Private Limited (Petitioner No. 5), Ambey Plaza Private Limited (Petitioner No. 6), Ambey Towers Private Limited (Petitioner No. 7), Aryavrat Apartment Private Limited (Petitioner No. 8), Aryavrat Enclave Private Limited (Petitioner No. 9), Aryavrat Infrastructure Private Limited (Petitioner No. 10), Aryavrat Plaza Private Limited (Petitioner No. 11), Jainex Properties Private Limited (Petitioner No. 12), Pratibha Niketan Private Limited (Petitioner No. 13), Simplex Apartment Private Limited (Petitioner No. 14), Simplex Enclave Private Limited (Petitioner No. 15), Simplex Mansion Private Limited (Petitioner No. 16), Simplex Niketan Private Limited (Petitioner No. 17), Simplex Nirman Private Limited (Petitioner No. 18), Simplex Towers Private Limited (Petitioner No. 19) , and Simplex Land & Housing

Development Private Limited (Petitioner No. 20) and 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 Company 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 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;
- g) Leave is granted to the Petitioner(s) to file the Schedule of Assets and Liabilities 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 one week 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 Companies shall be dissolved without winding up with effect from the date or last of the dates of filing of the certified copies of the order, as aforesaid (Effective Date) and the Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on the file kept by him in relation to the Transferee Company and the files relating to the said companies shall be consolidated accordingly.

7. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
8. Company Petition (CAA) No. 228 / KB /2021 is disposed of accordingly.
9. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

BALRAJ JOSHI
Digitally signed by BALRAJ
JOSHI
Date: 2022.05.20 22:44:46
+05'30'
(Balraj Joshi)
Member (Technical)

Rajasekhar V K
Digitally signed by
Rajasekhar V K
Date: 2022.05.20 20:06:45
+05'30'
(Rajasekhar V. K.)
Member (Judicial)

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