

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.A.(CAA)/49(AHM)2024

Order under Sections 230-232 of the Co. Act, 2013

IN THE MATTER OF:

Aditya Birla Finance Limited
Aditya Birla Capital Limited

.....Applicants

Order delivered on: 29/11/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-1, AHMEDABAD**

CA(CAA)/49(AHM)2024

[Company Application under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016].

In the matter of **Scheme of Amalgamation**

Memo of Parties

Aditya Birla Finance Ltd.

CIN:U65990GJ1991PLC064603

A company incorporated under the provisions of the Companies Act, 1956, having its registered office at Indian Rayon Compound, Veraval-362 266, Gujarat, India.

..... Applicant Company No.1/
Amalgamating Company

Aditya Birla Capital Ltd.

CIN:L67120GJ2007PLC058890

A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Indian Rayon Compound, Veraval-362 266, Gujarat, India.

..... Applicant Company No.2/
Amalgamated Company

Order Pronounced on 29.11.2024

CORAM:

MR. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

MR. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant Companies : Mr. Sandeep Singhi, Advocate

ORDER
Per Bench

1. This is a joint Company Application viz., CA(CAA)/49(AHM)/2024, filed by two companies, namely, Aditya Birla Finance Ltd. (Amalgamating Company) and Aditya Birla Capital Ltd. (Amalgamated Company) under Sections 230 to 232 and other applicable provisions of the Companies Act and read with Rule 3 of the Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 (hereinafter referred to as “**Companies (CAA) Rules, 2016**”).
2. Two affidavits both dated 25.09.2024, in support of the company application, were sworn by Mr. Ankur Shah, Company Secretary, the authorized signatory of the Amalgamating Company and Mr. Santosh Haldankar, the authorized signatory of Amalgamated Company duly authorized vide Board Resolutions dated 11.03.2024 of the applicant companies. The aforesaid affidavits and board resolutions are placed on record along with the company

application. The Board Resolutions are annexed at ***Annexure-M & Annexure-P*** of the company application.

3. Aditya Birla Finance Ltd./Amalgamating Company is a wholly-owned subsidiary of Aditya Birla Capital Ltd./Amalgamated Company. The proposed Scheme provides for amalgamation of Amalgamating Company with Amalgamated Company with effect from the Appointed Date i.e. 01.04.2024. The said Scheme is appended as ***“Annexure-I”*** to the Company Application.
4. It is stated that the registered office of both the applicant companies are situated within the territorial jurisdiction of Registrar of Companies, Ahmedabad, Gujarat, which is falling under the jurisdiction of this Tribunal.
5. It is further stated that the applicant companies are empowered by their respective Memorandum of Association and Articles of Association to enter into a Scheme of Amalgamation. Copies of Memorandum and Articles of Association and copies of Certificate of Incorporation of both the applicant companies are placed on record. The copy of Annual Report for the year ended 31.03.2024

(**Annexure-C**) and copy of unaudited financial results for the quarter ended on 30.06.2024 (**Annexure-D**) of amalgamating company, copy of Annual Report for the year ended 31.03.2024 (**Annexure-G**) and unaudited financial results (consolidated and standalone) for the quarter ended 30.06.2024 (**Annexure-H**), are placed on record.

6. The applicant companies in this company application have sought for the following reliefs;

	EQUITY SHAREHOLDERS MEETING	PREFERENCE SHAREHOLDERS MEETING	SECURED CREDITORS MEETING	UNSECURED CREDITORS MEETING
Aditya Birla Finance Ltd. / Amalgamating Company	Dispensation of meeting	N A.	Dispensation of meeting	Dispensation of meeting
Aditya Birla Capital Ltd. / Amalgamated Company	Directions to convene meeting	N.A.	N.A.	Dispensation of meeting

7. **Aditya Birla Finance Ltd./Amalgamating Company**

- (i) From the certificate of incorporation filed, it is evident that it was incorporated on 28.08.1991, as Town Finance & Investments Pvt. Ltd. with the Registrar of Companies, Maharashtra, as a private limited company, under the provisions of the Companies Act, 1956, its CIN is U65990GJ1991PLC064603. Its name

was changed to (i) Town Finance & Investments Ltd. on 17.03.1994, pursuant to its conversion into a public limited company (ii) BGFL Finance & Investments Ltd. on 27.04.1995, (iii) Birla Global Asset Finance Company Ltd. on 14.03.2001, (iv) Birla Global Finance Company Ltd. on 21.07.2006 and (v) Aditya Birla Finance Ltd. on 21.12.2009. On 30.03.2011, the registered office of the Amalgamating Company was shifted from the State of Maharashtra to the State of Gujarat. It is registered with the Reserve Bank of India (**RBI**) as non-deposit taking systematically important Non-Banking Financial Company (**NBFC-ICC**) in terms of the certificate registration issued by the RBI, bearing Registration No.N.01.00500 dated 09.08.2011. It has also been classified as an Upper Layer NBFC (**NBFC-UL**) as per the Scale-Based Regulations by the RBI. Amalgamating Company, *inter alia*, is offering end-to-end lending, financing and distributing financial products to retail, High-Net worth Individuals (**HNI**), ultra HNI, micro, small and medium enterprises

(MSME) and corporate customers across India. It is also engaged in the business of distribution of financial products such as mutual funds, insurance products, etc. The non-convertible debentures of the Amalgamating Company are listed on the Stock Exchanges.

- (ii) The authorized, issued, subscribed and paid-up share capital as on 31.08.2024, was as under:-

Particulars	Amount in Rs.
Authorised Share Capital	
127,00,00,000 equity shares of Rs.10 each	1270,00,00,000
100,00,00,000 preference shares of Rs.10/- each	1000,00,00,000
1,00,00,000 8% redeemable cumulative preference shares of Rs.10/- each	10,00,00,000
Total	2280,00,00,000
Issued, Subscribed and Paid-up Capital	
68,93,96,930 equity shares of Rs.10/- each fully paid up	689,39,69,300
Total	689,39,69,300

- (iii) As on 31.08.2024, there are **15** Equity Shareholders in the Amalgamating Company holding 68,93,96,930 and all the Equity Shareholders have given their consent on affidavits approving the proposed Scheme. The consent affidavits of the Equity Shareholders and the

certificate dated 24.09.2024 of Chartered Accountant Mukund M. Chitale & Co. along with list of equity shareholders and shareholding pattern are placed on record as **Annexure:AJ Colly** and **Annexure:AI** , respectively.

(iv) As far as the secured creditors are concerned, it is submitted as under :-

- a) Under the Scheme, no compromise is offered to any of the secured creditors (which includes secured NCD holders) or the unsecured creditors (which includes unsecured NCD holders) of the Amalgamating Company in respect of their claims and neither any liability of the secured creditors (which includes secured NCD holders) or the unsecured creditors (which includes unsecured NCD holders) under the Scheme is being reduced or extinguished. Copy of certificate dated 24.09.2024 of Mukund M. Chitale & Co. on summary of the secured creditors and unsecured creditors along with the categorization and numbers, as on

31.08.2024, is annexed hereto and marked as **Annexure-AK**.

- b) It is further stated that as per the financial position as on March 31, 2024, in the case of the Amalgamating Company, there is an excess of assets over liabilities, on a standalone basis, amounting to Rs.15,243.53 Crore. In the case of the Amalgamated Company, there is an excess of assets over liabilities, on a standalone basis, amounting to Rs.13,918.58 Crore. It is stated that if the Scheme would have to be implemented on 31.03.2024, on a proforma basis, there would have been an excess of assets over liabilities, on a standalone basis, amounting to Rs. 22,033.92 Crore in the Amalgamated Company. Copy of the certificates dated 24.09.2024 of the practicing Chartered Accountants Mukund M. Chitale & Co. are annexed to the company application as **Annexure AL (Colly)**. Further, for the year ended 31.03.2024, the net profit of the Amalgamating Company, on a

standalone basis, amounted to Rs.2,220.86 crore and for the financial year ended 31.03.2024, the net profit of the Amalgamated Company, on a standalone basis, amounted to Rs.714.28 crore. Thus, both the Applicants are profit making companies.

- c) Copy of the No Objection Certificate dated 18.07.2024 issued by the sole debenture trustee is already annexed to the present joint Company Application at **Annexure-S**. It is further stated that the sole debenture trustee has obtained approvals to the Scheme from 75.87% of the NCD holders (comprising of secured and unsecured NCD holders), in value terms. Further, the Amalgamating Company has obtained the consent to the Scheme from 100%, in value, of the secured creditors (other than secured NCD holders). Copies of the consent to the Scheme issued by the aforesaid secured creditors (other than secured NCD holders) of the Amalgamating Company are annexed to the present

joint Company Application at **Annexure T (Colly)**. Copy of the certificate issued by the practicing Chartered Accountant Mukund M. Chitale & Co. showing the percentage in value of the secured creditors (other than secured NCD holders) who have issued the consent to the Scheme, is annexed to the company application as **Annexure-AM**.

- d) It is stated that, under the aforesaid circumstances, the meeting of the secured creditors (which includes secured NCD holders) and unsecured creditors (which includes unsecured NCD holders) of the Amalgamating Company is not required to be called for as the interest of the secured creditors (which includes secured NCD holders) and unsecured creditors (which includes unsecured NCD holders) of the Amalgamating Company are in no way affected by the present Scheme. It is therefore, prayed that this Tribunal be pleased to hold that no meeting of the secured creditors (which includes secured NCD holders) and unsecured creditors

(which includes unsecured NCD holders) of the Amalgamating Company is required to be held or convened to consider the Scheme.

(v) As on 31.08.2024, there are no preference shareholders. Copy of the certificate dated 24.09.2024, of the practicing Chartered Accountant Mukund M. Chitale & Co. certified that the Amalgamating Company does not have any preference shareholders as on the date of filing of the present joint company application, is annexed as **Annexure-AN** to the application.

8. It is stated that the NCDs of the Amalgamating Company are listed on the Stock Exchanges. The Amalgamating Company by separate letters both dated 22.03.2024 applied to the stock exchanges for their no-objection to the Scheme in terms of Regulation 59A of SEBI LODR read with SEBI NCD Circular. BSE was designated as the 'Designated Stock Exchange' for coordinating with SEBI for obtaining approval of SEBI in accordance with SEBI NCD circular. The draft scheme along with related documents, in terms of SEBI NCD Circular, were hosted on the websites of

the Amalgamating Company on 22.03.2024, BSE on 01.04.2024, NSE on 07.05.2024 and was open for complaints/comments from 01.04.2024 to 14.05.2024 for submission to BSE and from 07.05.2024 to 16.05.2024 for submission to NSE. No complaints were received by the Amalgamating Company, during the aforesaid period. Accordingly, the Amalgamating Company, filed a Nil Complaint Report with the BSE on 14.05.2024 and NSE on 17.05.2024, copies are annexed to the company application as **Annexure-Q (Colly.)**

9. It is stated that in terms of paragraph-A.2(j) of Part-I of Annexure-XII-A to Chapter XII of SEBI NCD Circular, the Amalgamating Company has obtained the No Objection Certificate to the Scheme from the sole debenture trustee of the NCDs which are listed on the Stock Exchanges and has filed the same with the Stock Exchanges on 12.08.2024. Copy of the No Objection Certificate issued by the sole debenture trustee (after obtaining approval from 75.87%, in value, of the NCD holders (comprising of secured and unsecured NCD holders) of the NCDs issued by the Amalgamating Company and which are listed on the Stock

Exchanges and annexed to the application as Annexure-S. Amalgamating Company has also obtained the consent to the Scheme from 100%, in value, of the secured creditors (other than secured NCD holders). Copies of the consent of the secured creditors (other than secured NCD holders) of the Amalgamating Company are annexed to the company application as **Annexure-T (Colly.)**.

10. The applicant companies have placed at **Annexure-U**, the permission from BSE and NSE which is taken as combined permission issued with respect to equity shares and non-convertible debentures which are listed on the respective exchanges.

11. **Aditya Birla Capital Ltd./Amalgamated Company**

(i) From the certificate of incorporation filed, it is evident that it was incorporated on 15.10.2007 as Aditya Birla Financial Services Pvt. Ltd. with the Registrar of Companies, Maharashtra, Mumbai, as a private limited company under the provisions of the Companies Act, 1956. Its name was changed to (i) Aditya Birla Financial Services Ltd. on 04.12.2014

pursuant to its conversion into a public limited company and (ii) Aditya Birla Capital Limited on 21.06.2017. Its registered office was shifted from the State of Maharashtra to the State of Gujarat on 15.12.2009. It is presently a core investment company and through its subsidiaries and associate companies is offering end-to-end investing and financing solutions to a wide range of customers across the country. Its product portfolio meets the varied financial requirements of a wide range of customers, such as salaried and self-employed individuals, HNIs, ultra HNIs, MSMEs and large and mid-corporates and has business interest including that of a non-banking financial institution, housing finance, asset management, broking, life and health insurance through its subsidiaries/associate companies across India. It is registered with the RBI as a systematically important non-deposit taking core investment company (NBFC-CIC) in terms of the certificate of registration issued by the RBI, bearing Registration No.B.01.00555, dated 06.07.2017. It has also been

classified as a Middle Layer (NBFC-ML) as per the Scale-Based Regulations by the RBI. The equity shares of the Amalgamated Company are listed on the Stock Exchanges and the global depository receipts are listed on the Luxebourg Stock Exchange.

- (ii) The authorized, issued, subscribed and paid-up capital as on 31.08.2024, was as under:-

Particulars	Amount in Rs.
Authorised Share Capital	
400,00,00,000 equity shares of Rs.10 each	4000,00,00,000
Total	4000,00,00,000
Issued, Subscribed and Paid-up Share Capital	
260,46,42,274 equity shares of Rs.10/- each fully paid up	26,04,64,22,740
Total	26,04,64,22,740

It has outstanding stock options under Amalgamated Company ESOP Plan(s), the exercise of which before the Effective Date may result in an increase in the issued and paid-up share capital of the amalgamated company

- (iii) As on 31.08.2024, there are 5,43,764 equity shareholders. It is submitted that meeting of the equity shareholders be called to consider and if thought fit, to

approve the Scheme with or without modification(s). The certificate **(Annexure-AO)** dated 24.09.2024 of the Chartered Accountant Mukund M. Chitale & Co. regarding the shareholding pattern of the equity shareholders of the Amalgamated Company as on 31.08.2024. It is further submitted that in light of the MCA Circulars, necessary directions may be given to the effect that the voting by the Equity Shareholders of Amalgamated Company to the Scheme, shall be carried out through remote e-voting and e-voting at the time of the VC/OAVM convened meeting. It is further submitted that the equity shareholders whose email IDs are not available with the Amalgamated Company or who have not received notice convening the said meeting of the equity shareholders, can access/download the said notices from the website of the Amalgamated Company viz. www.adityabirlacapital.com and the websites of the Stock Exchanges i.e. BSE and NSE at www.bseindia.com and www.nseindia.com, respectively.

- (iv) As on 31.08.2024, the Amalgamated Company does not have any secured creditors. The certificate **(Annexure-**

AQ) dated 24.09.2024 of the Chartered Accountant Mukund M. Chitale & Co. confirmed that there are no secured creditors in the Amalgamated Company as on 31.08.2024.

(v) As far as the unsecured creditors are concerned, it is stated that under the Scheme, no compromise is offered to any of the unsecured creditors of the Amalgamated Company and neither any liability of the unsecured creditors is being reduced or extinguished. It is further stated that there is an excess of assets over liabilities of the applicant companies and both the applicant companies are profit making companies. Upon the scheme becoming effective, the profitability of the Amalgamated Company will increase. Thus, upon the effectiveness of the Scheme, the Amalgamated Company's financial position shall be enhanced and the Amalgamated Company would benefit from a larger balance sheet and net worth of the Amalgamating Company. The summary of the unsecured creditors along with the categorization and numbers, as on 31.08.2024, is duly certified by the PCA Mukund M.

Chitale & Co. and the certificate (**Annexure-AR**) dated 24.09.2024 is annexed to the company application. It is further stated that under the Scheme, the meeting of the unsecured creditors of the Amalgamated Company is not required to be called for as the interest of the unsecured creditors of the Amalgamated Company is in no way affected by the present Scheme.

- (vi) As on 31.08.2024, there are no preference shareholders. The certificate (**Annexure-AS**) dated 24.09.2024 of the practicing Chartered Accountant Mukund M. Chitale & Co. is annexed to the company application.

- 12.** It is submitted that BSE by its letters dated 28.06.2024 and NSE by its letter dated 01.07.2024 have communicated the observations of SEBI. Accordingly, BSE and NSE have given their no adverse observation/no-objection to the Amalgamating Company, in terms of Regulation 59A of SEBI LODR to enable the Amalgamating Company to file the Scheme before this Tribunal. Copies of the aforesaid letters are annexed to the company application as **Annexure-U (Colly.)**

13. It is further submitted that pursuant to the observations made by SEBI, the Amalgamating Company has given the details of “.... *Ongoing adjudication and recovery proceedings, prosecution initiated and all other enforcement action taken, if any, against Aditya Birla Capital Ltd/Amalgamated Company, its promoters and directors*”. The aforesaid details are annexed to the company application as **Annexure-V**.

14. It is stated that the Amalgamating Company, in terms of paragraph-42 of Master Direction – Reserve Bank of India (Non-Banking Financial Company-Scale Based Regulation) Directions, 2023 (RBI Master Direction), filed necessary application with RBI on 20.03.2024 for prior approval. The RBI, vide its letter dated 18.09.2024, granted its approval as per the terms stated in the said letter. Copy of the said letter is annexed to the company application as **Annexure-W**. The RBI, in its letter dated 18.09.2024 Ref. No. DOR.RSG.AMD.No.S1031/01.12.173/2024-25, in paragraphs-3, 4,5,6 and 7 are submitted as follows:-

“3. Further, the bank does not have any objection with respect to following:

- i. Continuation of ABFL's business by ABCL as NBFC-ICC post amalgamation till the issuance of new CoR as an NBFC-ICC to ABCL and subject to compliance with guidelines applicable to NBFC-ICC. ABCL shall be required to apply for conversion to NBFC-ICC at the earliest after effective date of amalgamation.
 - ii. Continuation of ABFL's factoring business by ABCL post amalgamation. ABCL shall be required to apply for additional CoR as NBFC-Factor post its conversion to NBFC-ICC immediately.
 - iii. Holding 51% of paid-up capital in Aditya Birla Sun Life Insurance Company Limited by ABCL consequent to the proposed amalgamation subject to necessary clearance from IRDAI, if any, and, compliance with all the conditions as applicable to ABFL for the business.
4. The request of conversion of CoR from CIC to ICC (post-merger of ABFL into ABCL) shall be considered subject to the following:-
 - i. CoRs of three group companies viz. Birla Group Holdings Limited, IGH Holdings Private Limited and Pilani Investment and Industries Corporation Limited, have been converted from ICC to CIC.
 - ii. CoRs of two group companies, viz. Naman Finance & Investment Private Limited and Padmavati Investment Private Limited, have been converted from Type II to Type I NBFC-ND.
5. The applications for conversion of CoR may be submitted to Department of Regulation (DoR), Central Office directly.
6. The resultant entity shall file the following documents to the Bank within 15 days of Effective Date of the Scheme:
 - i. Applicable returns in CIMS portal;
 - ii. Application to DoR for conversion from NBFC-CIC to NBFC-ICC within 15 days of receipt of approval of amalgamation from NCLT;

- iii. Application to DoR for additional CoR as NBFC-Factor immediately on conversion of CoR from CIC to ICC.
 - iv. Surrender of CoR of Aditya Birla Finance Ltd. (ICC and Factor) for cancellation upon merger in terms of our Press Release dated December 01.2022;
 - v. Surrender of CoR of Aditya Birla Capital Ltd. (CIC) for cancellation upon merger
 - vi. Post-merger audited financials of resultant entity
 - vii. Compliance to pending inspection observations of ABFL post amalgamation.
7. All regulatory or other proceedings of like nature or cause of actions against the transferor company pending and/or arising, before, on or after, the appointed date shall not abate or be discontinued or be in any way prejudicially affected by reason of anything contained in the scheme of amalgamation but shall be initiated, continued and enforced by or against the transferee company in the manner and to the same extent as would or might have been initiated, continued and enforced against the transferor company without any further act, instrument, deed, matter or thing being made, done or executed. The transferee company will have all such regulatory or other proceedings initiated by or against the transferor company referred to in this clause, transferred in its name and to have the same continued, prosecuted and enforced by or against the transferee company, to the exclusion of the transferor company. The Scheme of Amalgamation shall include this clause.

The applicant companies submitted that necessary revision/modification has been made in/to the Scheme. ***Annexure-I*** to the present joint Company Application carries the aforesaid revision/modification.

15. It is stated that in terms of RBI Master Direction, the Amalgamated Company had filed necessary application with RBI on 20.03.2024 to permit the Amalgamated Company to continue to hold 51% shareholding in Aditya Birla Sun Life Insurance Company Limited as a consequence to the proposed Scheme. RBI, vide its letter dated 18.09.2024, granted its approval as per the terms stated in the letter. Copy of the said letter is annexed to the company application as **Annexure-AA**.
16. It is stated that in compliance with the provisions of Section 232(c) of the Act, the Board of Directors of the applicant companies, have adopted separate Reports both dated 11.03.2024, inter alia, explaining the effect of the Scheme on their shareholders, key managerial personnel and holders of NCDs (in case of amalgamating company. Copies of the aforesaid reports are annexed as **Annexure-AD (Colly)** to the company application.
17. It is further stated that the statement showing the pre-arrangement shareholding pattern of the applicant companies and the post-arrangement shareholding pattern

of the Amalgamated company as on 31.08.2024, consequent to the Scheme, is annexed as **Annexure-AE (Colly)** to the company application. Further, the capital structure (expected, based on capital structure as on 31.08.2024) of the Amalgamated Company, after implementation of the Scheme, is annexed as **Annexure-AF** to the company application. Further, in terms of Paragraph A.10.2(a) of Part I of Annexure-XII-A of chapter XII of SEBI NCD circular, the pre-arrangement debt structure of the Amalgamating Company as on 31.08.2024 and the post-arrangement expected debt structure debt of the Amalgamated Company, consequent to the Scheme, is annexed as **Annexures-AH (Colly)** to the company application.

13. A copy of Valuation Report (Annexure-J)/report on recommendation of fair ratio of entitlement for the NCD holders of the Amalgamating Company in respect of the proposed Scheme, dated 11.03.2024, issued by M/s. Bansi S. Mehta Valuers LLP, Registered Valuer, Registration No. IBBI/RV-E/06/2022/172, is annexed to the company application as **Annexure-J**.

19. A copy of fairness opinion dated 11.03.2024 issued by Inga Ventures Pvt. Ltd., an independent Securities and Exchange Board of India registered Category-I Merchant Banker in respect of the Valuation Report, is annexed as **Annexure:K** to the application.
20. It is stated that no investigation proceedings have been instituted or are pending in relation to the applicant companies under Chapter XIV of the Act or the corresponding provisions of Sections 235 to 251 of the Companies Act, 1956.
21. It is further stated that no winding up proceedings have been filed or are pending against any of the applicant companies under the Act or under the corresponding provisions of the Companies Act, 1956.
22. It is stated that no proceedings are pending under the Act or under the corresponding provisions of the Companies Act, 1956 against any of the applicant companies.
23. It is further stated that no insolvency proceedings have been filed or are pending against the applicant companies

under the Insolvency and Bankruptcy Code, 2016 or under Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.

24. The applicant companies submitted that the Statutory Auditors have certified that the Accounting Treatment specified in the proposed Scheme is in conformity with the applicable accounting standards prescribed under Section 133 of the Companies Act, 2013. The certificate dated 11.03.2024 in respect of the Amalgamating Company and the certificate dated 23.04.2024 in respect of the Amalgamated Company issued by the Statutory Auditors of the Applicant Companies are placed on record as ***Annexure-AB and Annexure-AC***, respectively to the company application.

25. Description of the Scheme:

The Scheme, inter alia, provides for:

- (a) amalgamation of the Amalgamating Company with and into the Amalgamated Company, with effect from the Appointed date (as defined in the Scheme);
- (b) reorganisation/reclassification of the authorized preference share capital represented by 8% redeemable

cumulative preference shares of Rs.10/- each of the Amalgamating Company into the authorized equity share capital of the Amalgamating Company;

- (c) pursuant to reclassification, as stated above, transfer of the authorized share capital of the Amalgamating Company to the Amalgamated Company and consequential increase in the authorized share capital of the Amalgamated Company;
- (d) cancellation of the equity shares issued by the Amalgamating Company to the Amalgamated Company and its nominees;
- (e) vesting of the NCDs of the Amalgamating Company into the Amalgamated Company;
- (f) grant of Amalgamated Company Options (as defined in the Scheme) and/or its Performance Stock Units, in lieu of the Amalgamating Company Option(s) (as defined in the Scheme) granted by the Amalgamating Company to its employees under its Amalgamating Company ESOP Plan (as defined in the Scheme) on the ratio as approved by the respective Nomination & Remuneration Committee of the Amalgamating Company and the Amalgamated Company.
- (g) alteration and amendment to the memorandum of association and articles of association of the Amalgamated Company; and

(h) dissolution of the Amalgamation Company without being wound up.

26. Rationale and benefits of the Scheme:

The Amalgamating Company and the Amalgamated Company form part of the Aditya Birla group. The Amalgamating Company, a wholly owned subsidiary of the Amalgamated Company, is engaged in the business of lending and distribution of financial products. With the objective of simplifying the group structure, it is proposed to consolidate the Amalgamating Company with the Amalgamated Company, its holding company.

The rationale for, and benefits of the amalgamation of the Amalgamating Company into and with the Amalgamated Company are, inter alia, as follows:-

- (i) Rationalization and simplification of structure by reducing the number of legal entities;
- (ii) To achieve optimal and efficient utilization of capital, enhance operational and management efficiencies;
- (iii) The Amalgamated Company, being an operating company would have direct access to capital, thereby

creating a unified larger entity with greater financial strength and flexibility;

- (iv) Consolidation of the business, leading to synergies of operations and resulting in the expansion and long-term sustainable growth, which will enhance value for various stakeholders of the Amalgamated Company.
- (v) Seamless implementation of policy changes, reduction in the multiplicity of legal and regulatory compliances and costs rationalisation resulting in improvement in shareholder returns.
- (vi) Poling of knowledge and expertise of both the Parties and align with the business plans to meet long-term objectives; and
- (vii) Ensuring on-going compliance with the Scale Based Regulations applicable to NBFCs, as notified by RBI.

Upon the effectiveness of the amalgamation, the Amalgamated Company would, inter alia, be engaged into the following businesses (i) lending business (NBFC business of erstwhile Amalgamating Company and housing finance business through its 100% subsidiary); and (ii) various non-lending financial services and ancillary

businesses, directly and indirectly, through subsidiaries/associates. Accordingly, the Scheme is in the interest of both the companies involved and their respective shareholders.

27. The applicant companies have relied upon the following judgments/order of Hon'ble High Courts:-

- (i) Hon'ble High Court of Delhi in the matter of Ansal Properties and Industries Limited and Anr.
- (ii) Hon'ble High Court of Gujarat in the matters of
 - (a) Union of India vs. Ambalal Sarabhai Enterprises Ltd. ICICI Bank Limited,
 - (b) Gujarat Bottling Company Pvt. Ltd.,
 - (c) Cadila Healthcare Ltd.
 - (d) Rajnidhi Finance Limited and Laxminarayan Investment Ltd.,
 - (e) Shaharsh Infrastructure Pvt. Ltd.,
 - (f) DCPL Foundries Ltd., and
 - (g) Goldenarch Estate Pvt. Ltd.
- (iii) Hon'ble High Court of Calcutta in the matter of Bengal Tea Industries and Ors. Vs. Union of India
- (iv) Hon'ble High Court of Andhra Pradesh in the matter of Nav Chrome Limited In re, Nava Bharat Ferro Alloys Ltd.
- (vi) Hon'ble High Court of Karnataka in the matter of Mysore Cements Ltd.

28. Reliance is also placed on the judgment of Hon'ble High Court of Bombay in the matter of **Mahaamba Investments Ltd. vs. IDI Ltd.** [Company Application (Lodg.) No.1047/2000. The relevant portion of the aforesaid judgment is reproduced as under:-

“5. In the present case, having regard to the relevant clauses of the proposed scheme and particularly the provision whereby no new shares are sought to be issued to the members of the transferor-company by the transferee-company, the scheme will not affect the members of the trans-feree-company. The creditors of the transferee-company are not likely to be affected by the scheme in view of the financial position of the transferee-company. In paragraphs 13 and 14 of the affidavit in support of the company application, the financial position of the transferor and trans-feree-companies has been set out and which would show that in so far as the transferor-company is concerned, it has an excess of assets over liabilities to the extent of Rs.508 lakhs whereas in the case of the transferee-company, there is an excess of assets over liabilities to the extent of Rs.6,900 lakhs.

6. In the circumstances, the office objection is accordingly disposed of with the clarification that filing of a separate petition by the transferee-company is not necessary, in the facts and circumstances of the present case”.

- 29.** The applicant companies have also relied upon the judgment of the Hon'ble NCLAT in the matters of DLF Phase-IV Commercial Developers Limited and Ambuja Cements Ltd.
- 30.** The applicant companies have also relied upon judgments/orders of other Benches of NCLT in support of its prayer for dispensation of meetings of creditors. Further reliance is also placed on the judgment of this Tribunal in the case of ICICI Bank Limited, Satlon Enterprise Pvt. Ltd. , Brahmi Tracks Management Services Pvt. Ltd. and J.B. Designers Pvt. Ltd.
- 31.** It is submitted that since the interest of the Secured Creditors and Unsecured Creditors of the Amalgamating Company as well as the Unsecured Creditors of the Amalgamated Company is in no way affected by the present scheme, the Applicant Companies have prayed that the meetings of the Secured Creditors and Unsecured Creditors of the Amalgamating Company and the meeting of the Unsecured Creditors of the Amalgamated Company be dispensed with.

32. We have heard Ld. Counsel for the applicant companies and perused the record.

33. Taking into consideration, the company application filed by the applicant companies and the documents filed, including the observation letters of BSE dated 28.06.2023, NSE dated 01.07.2024 and letter of RBI dated 18.09.2024 and the judgments/orders relied upon by the applicant companies therewith as well as the position of law, this Tribunal issue the following directions to meet the ends of justice: -

A. In relation to Aditya Birla Finance Ltd./Amalgamating Company

(i) With respect to Equity Shareholders:

Since it is represented that there are **15** Equity shareholders in the Company whose consents by way of Affidavits have been obtained from all the equity shareholders and are placed on record, the necessity of convening, holding and conducting the meeting is ***dispensed with.***

(ii) **With respect to Secured Creditors and Unsecured Creditors**

Secured Creditors

It is represented that no arrangement or compromise is offered to any of the secured creditors and that the rights of the secured creditors are not affected in any manner as there is no extinguishment of any liability and the net worth of the applicant companies are positive i.e. as on 31.03.2024, the excess of assets over liabilities of Amalgamating Company was Rs.15,243.53 crore and that of Amalgamated Company was Rs.13,938.58 crore. It is also represented that as on 30.06.2024, the excess of assets over liabilities of the Amalgamating Company was Rs.15,862.58 crore and that of the Amalgamated Company was Rs.14,023.85.

Unsecured Creditors

It is represented that no arrangement or compromise is offered to any of the unsecured creditors and the rights of the unsecured creditors are not affected in any manner as there is no extinguishment of any liability and that the net worth of both the applicant companies are positive.

Since no arrangement or compromise is being offered to any of the Secured Creditors and Unsecured Creditors of the Amalgamating Company under the Scheme, no liability is being reduced or extinguished to any of the Secured Creditors and Unsecured Creditors of the Amalgamating Company under the Scheme. Considering the fact that there will be an excess of assets over liabilities upon amalgamation of Amalgamating Company into Amalgamated Company as well as in view of the decision of Hon'ble NCLAT and various Hon'ble High courts relied upon by the applicant companies, the meetings of the Secured Creditors and Unsecured Creditors of the Amalgamating Company are hereby ***dispensed with.***

(iii) With respect to the Preference Shareholders

Since it is represented that there are no Preference Shareholders in the company, the necessity of convening and holding a meeting of Preference Shareholders does not arise.

B. In relation to Aditya Birla Capital Ltd./Amalgamated Company

(i) With respect to the Equity Shareholders

Since it is represented that there are 5,34,764 **Equity Shareholders** as on 31.08.2024 the meeting of the Equity Shareholders shall be convened and held **on 07.01.2025** at **11.00 a.m.** through Video Conferencing (VC)/Other Video Visual Means (OVAM), for the purpose of conceding and, if though fit, approving with or without modification(s), the proposed Scheme.

(ii) **With respect to Secured Creditors:**

Since it is represented that there are no Secured Creditors in the company, the necessity of convening and holding a meeting of Secured Creditors does not arise.

(iii) **With respect to Unsecured Creditors:**

Since no arrangement or compromise is being offered to any of the Unsecured Creditors of the Amalgamated Company under the Scheme, no liability is being reduced or extinguished to any of the Unsecured Creditors of the Amalgamated Company under the Scheme. Considering the fact that there will be an excess of assets over liabilities upon amalgamation of Amalgamating Company into Amalgamated Company as well as in view of the decision of Hon'ble NCLAT and various Hon'ble High courts relied

upon by the applicant companies, the meeting of the Unsecured Creditors of the Amalgamated Company is hereby ***dispensed with***

(iv) **With respect to the Preference Shareholders**

Since it is represented that there are no Preference Shareholders in the company, the necessity of convening and holding a meeting of Preference Shareholders does not arise.

34. The quorum for the aforesaid meeting shall be as per Section 103 of the Companies Act, 2013 as follows:-

For Applicant Company No.2/Amalgamated Company

S.No.	CLASS	QUORUM
1	EQUITY SHAREHOLDERS	30

35. As requested by the Applicant Companies, we hereby appoint **Hon'ble Mr. Justice Akil Kureshi**, former Chief Justice of the High Court of Rajasthan and Tripura, as the Chairperson and in his absence, **Mr. Unmesh Shukla**, Sr. Advocate. The Fee of the Chairperson for the aforesaid meeting shall be *Rs.3,00,000/- (Rupees Three Lakh Only)* in addition to meeting his incidental expenses. The

Chairperson(s) will file the report(s) of the aforesaid meeting within a week from the date of holding of the above-said meeting.

36. As requested by the Applicant Companies, we hereby appoint **Mr. Dilip Bharadiya**, Practicing Company Secretary (FCS No.7956/C.P. No.6740) or in his absence **Mr. Omkar Dindorkar** (ACS No.43029) or in his absence **Mr. Saurabh Agarwal** (FCS No.9290), from M/s. MMJB & Associates LLP (C.P. No. 24580) as a Scrutinizer and would be entitled to a fee of *Rs.1,00,000/- (Rupees One Lakh Only)* for services in addition to meeting incidental expenses.

Voting Instructions

37. In case the quorum as noted above, for the above meeting, is not present at the meeting, then the meeting shall be adjourned by half an hour, and thereafter the person(s) present and voting shall be deemed to constitute the quorum. For the purpose of computing the quorum, the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered

office of the amalgamated company at least 48 hours before the meeting. The Chairperson appointed herein along with the Scrutinizer shall ensure that the proxy registers are properly maintained. However, every endeavour should be made by the amalgamated company to attain at least the quorum fixed, if not more in relation to approval of the Scheme.

- 38.** At least 1 (one) month before VC/OAVM meeting, an advertisement about convening of the said meeting, indicating the day, the date and time, shall be published in **“Indian Express” (All editions)** in the English language and Gujarati translation thereof in **“Sandesh” (Rajkot edition)**. The publication shall indicate time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Amalgamated Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230-232 of the Act can be obtained free of charge at the registered office of the Amalgamated Company or at the office of its Advocates, i.e. M/s. Singhi & Co., Singhi House,

1, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Ahmedabad-380 059 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Rules.

- 39.** At least 1 (one) month before the aforesaid meeting of the equity shareholders, a notice convening the said meeting, indicating the day, the date and the time aforesaid, instructions with regard to remote e-voting and e-voting at the time of VC/OAVM meeting, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with the provisions of Sections 230-232 of the Act and the provisions of the Rules thereunder, shall be sent through electronic mode to those equity shareholders of the Amalgamated Company whose email IDs are registered with the Registrar and Transfer Agent/depositories/Amalgamated Company, in terms of MCA Circulars. It is submitted that the Amalgamated Company shall ensure that the equity shareholders whose email IDs are not available with the Amalgamated Company or who have not received notice of convening the said meeting of the equity shareholders, can

access/download the said notices from the website of the Amalgamated Company viz. www.adityabirlacapital.com and the websites of the Stock Exchanges, i.e., BSE and NSE at www.bseindia.com and www.nseindia.com, respectively. It is further submitted that the Amalgamated Company shall also ensure furnishing of the aforesaid particulars to the equity shareholders, free of charge, within one day on a requisition being so made by the equity shareholder(s) at abc.secretarial@adityabirlacapital.com. The notice shall be sent to those equity shareholders of the Amalgamated Company whose names appear in the register of members/list of beneficial owners on Friday, November 29, 2024. Further, it is directed to fix Tuesday, December 31, 2024 being the cut-off date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014 for determining eligibility of shareholders entitled to vote through remote e-voting and e-voting at the meeting. The equity shareholders of the Amalgamated Company holding shares either in physical form or in a dematerialized form, as on the cut-off date,

would be entitled to cast their vote by remote e-voting and e-voting at the VC/OAVM meeting.

- 40.** The Chairman appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meeting referred to above. The Chairman is free to avail the services of the Amalgamated Company or any agency for carrying out the aforesaid directions. The Chairman of the meeting shall have all powers under the Articles of Association of the Amalgamated Company and also under the Rules in relation to conduct of meeting, including for deciding any procedural questions that may arise at the meeting or at adjournment or adjournments thereof proposed at the said meeting, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and also procedural questions in respect of proposed amendment(s) to the aforesaid Scheme or resolution, if any, and to ascertain the outcome of the meeting of the equity shareholders by remote e-voting and e- voting during VC/OAVM meeting.

- 41.** The quorum for the meeting of the equity shareholders shall be 30 (thirty) persons. Equity shareholders attending the meeting through VC/OAVM shall be counted for the purpose of reckoning the quorum under Section 103 of the Act.
- 42.** Authorised Representative shall be permitted to vote either through remote e- voting and e-voting during VC/OAVM convened meeting, provided that the certified copy of the board resolution/authorisation, etc. authorizing its representative to attend the meeting is sent to the Scrutinizer through electronic mode. Since the meeting would be held through VC/OAVM, the facility for appointment of proxies will not be available.
- 43.** The number and value of the equity shares of the equity shareholders, shall be in accordance with the records or registers of the Amalgamated Company and where the entries in the records or registers are disputed, the Chairman of the meeting shall determine the number or value, as the case may be, for purposes of the meeting and his decision in that behalf shall be final.

44. Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the directions regarding the issue of notices and the advertisement of the meeting, have been duly complied with as per Rule 12 of the Rules.
45. It is further ordered that the Chairman shall report to this Tribunal on the result of the said meeting in Form No. CAA.4, verified by his affidavit as per Rule 14 of the Rules in Form No. CAA.4 within 7 (seven) days after the conclusion of the meeting. The report of Chairman shall be filed before this Tribunal by the Chairman himself.
46. In compliance with sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the **Amalgamating Company** shall individually send notice to (i) Central Government through the Regional Director, North-Western Region, Ministry of Corporate Affairs (ii) the Registrar of Companies, Gujarat, (iii) the Official Liquidator, (iv) BSE, (v) RBI and (vi) Insurance Regulatory and Development Authority of India. In compliance with sub-section (5) of Section 230 of the Act and Rule 8 of the Companies (CAA) Rules, 2016, the and the **Amalgamated**

Company shall individually send notice to **(1)** Central Government through the Regional Director, North-Western Region, Ministry of Corporate Affairs **(2)** the Registrar of Companies, Gujarat **(3)** SEBI, **(4)** BSE, **(5)** NSE, **(6)** RBI. Further, the Amalgamating Company and the Amalgamated Company shall send notice to the concerned Income Tax Authorities along with full details of assessing officer and PAN numbers with copy also to the Principal Chief Commissioner of Income Tax Office, as well as **other Sectorial regulators**, if applicable, who may have significant bearing on the operation of the applicant companies or the Scheme *per se* along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 of the Act, shall send the same to this Tribunal with a copy of the same to be supplied to the Applicant Companies.

- 47.** The applicant companies are required to serve notice pursuant to Section 230(5) of the Companies Act, 2013 to the regulatory authorities which are likely to be affected.

- 48.** The amalgamated company shall further furnish a copy of the Scheme free of charge within 1 day of any requisition for the Scheme made by every member/equity shareholders of the amalgamated company entitled to attend the meeting as aforesaid.
- 49.** The Authorized Representative of the amalgamated company shall furnish an affidavit of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the proposed meeting.
- 50.** All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant Companies.
- 51.** The Registry and the Applicant Companies are directed to communicate a copy of this order to the Chairperson and Scrutinizer, within three working days after the pronouncement of the order.

52. The Company Application being **CA(CAA)/49(AHM)2024** stands **allowed** on the aforesaid terms.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

GS/RS

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)