

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

**CP (CAA) No. 172/MB/2021  
CONNECTED WITH  
CA (CAA) No. 54/MB/2021**

**IN THE MATTER OF SECTIONS  
230 TO 232 AND OTHER  
APPLICABLE PROVISIONS OF  
THE COMPANIES ACT, 2013**

**AND**

**IN THE MATTER OF THE  
COMPOSITE SCHEME OF  
AMALGAMATION AMONGST  
GATEWAY EAST INDIA PRIVATE  
LIMITED AND GATEWAY  
DISTRIPARKS LIMITED INTO  
GATEWAY RAIL FREIGHT  
LIMITED AND THEIR  
RESPECTIVE SHAREHOLDERS**

1. Gateway East India Private )  
Limited, a company )  
incorporated under the )  
Companies Act 1956 having )  
Corporate Identification )  
Number: )



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

CP (CAA) No. 172/MB/2021 CONNECTED WITH  
CA (CAA) No. 54/MB/2021

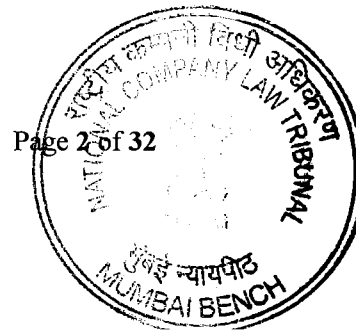
U51909MH1994PTC346843 )  
and having its registered office )  
at Sector 6, Dronagiri, Tal: )  
Uran, Dt: Raigad, Navi )  
Mumbai, Maharashtra- 400707 )

...First Petitioner Company/  
Transferor Company 1

2. **Gateway Distriparks Limited,** )  
a company incorporated under )  
the Companies Act 1956 having )  
Company Identification )  
Number: )  
L74899MH1994PLC164024 )  
and having its registered office )  
at Sector 6, Dronagiri, Tal: )  
Uran, Dt: Raigad, Navi )  
Mumbai, Maharashtra- 400707 )

...Second Petitioner Company/  
Transferee Company 1/  
Transferor Company 2

3. **Gateway Rail Freight** )  
**Limited,** a company )  
incorporated under the )  
Companies Act 1956 having )  
Company Identification )  
Number: )  
U60231MH2005PLC344764, )  
and having its registered office )  
at Sector 6, Dronagiri, Tal: )



Uran, Dt: Raigad, Navi ...**Third Petitioner Company/**  
Mumbai, Maharashtra- 400707 **Transferee Company 2**

Order Delivered on 02.12.2021

Coram:

Ms. Suchitra Kanuparthi, Hon'ble Member (Judicial)

Ms. Anuradha Sanjay Bhatia, Hon'ble Member (Technical)

Appearances (via videoconferencing):

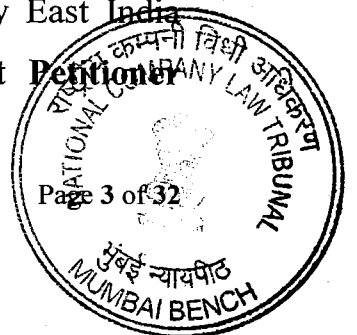
For the Petitioners: : Peshwan Jehangir a/w Haabil Vahanvaty,  
Bhanu Chopra i/b Khaitan & Co,

For the Regional Director (WR) : Ms. Rupa Sutar, Assistant Director

*Per: Suchitra Kanuparthi, Member (Judicial)*

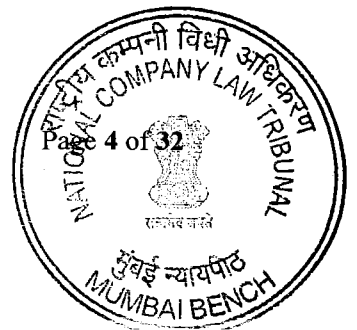
**ORDER**

1. The Bench is convened by video conference
2. Heard Learned Counsel for Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor has any party controverted any averments made in the Petition.
3. The sanction of this Tribunal is sought under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 ("Act"), to the Composite Scheme of Amalgamation amongst Gateway East India Private Limited (hereinafter referred to as the "**First Petitioner**")



**Company” or “Transferor Company 1”), Gateway Distriparks Limited (hereinafter referred to as the “Second Petitioner Company” or “Transferor Company 2 / Transferee Company 1”) and Gateway Rail Freight Limited (hereinafter referred to as the “Third Petitioner Company” or “Transferee Company 2”) and their respective shareholders (“Scheme”). The said Scheme provides for the amalgamation (merger by absorption) of the First Petitioner Company with the Second Petitioner Company, and thereafter, amalgamation (merger by absorption) of the Second Petitioner Company with the Third Petitioner Company.**

4. The Petitioner Companies are a part of the same group of companies. The First Petitioner Company is engaged in the business of operating a container freight station at Vishakhapatnam. The Second Petitioner Company is an integrated inter-modal logistics facilitator and operates container freight stations at Navi Mumbai, Chennai and Krishnapatnam. The Third Petitioner Company is *inter alia* a private container train operator and engaged in the business of providing intermodal rail transportation service for EXIM containers. As such the businesses of the Petitioner Company are complementary to each other.
5. The registered offices of the Petitioner Companies are located in Navi Mumbai, Maharashtra.
6. Learned Counsel for the Petitioner Companies submits that the circumstances and/or reasons and/or grounds that have necessitated and/or justified the Scheme and some of the major benefits which would accrue from the Scheme are extracted from the Scheme and stated below:



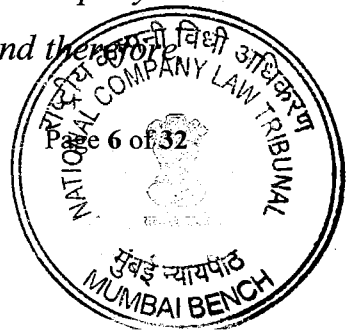
### ***“3. OBJECTS AND RATIONALE FOR THE PROPOSED SCHEME***

*This Scheme provides for: (i) amalgamation (merger by absorption) of the Transferor Company 1 / GEIPL with the Transferee Company 1 / GDL; and (ii) amalgamation (merger by absorption) of GDL / the Transferor Company 2 (post amalgamation of the Transferor Company 1/GEIPL with the Transferee Company 1 / GDL) with the Transferee Company 2 / GRFL, to enable better realization of potential of the businesses of the Companies in the form of amalgamated Transferee Company 2 which will yield beneficial results and enhanced value creation for their respective shareholders and better security and protection for their lenders and employees. This Scheme shall have the following benefits:*

- 3.1 Consolidation of businesses presently being carried on by the Transferor Companies and the Transferee Company 2, which shall create greater operational synergies and efficiencies at multiple levels of business operations and shall provide significant impetus to their growth;*
- 3.2 Improved earnings, cash flow and debt servicing abilities of the amalgamated Transferee Company 2;*
- 3.3 The amalgamation would result in financial resources of the Companies being efficiently pooled, leading to centralized and more efficient management of funds, greater economies of scale and a bigger and stronger resource base for future growth, which are presently divided amongst multiple corporate entities within the group;*



- 3.4 *Creation of value for shareholders of the Companies and other stakeholders, by way of creation of a large asset base, facilitating access to better financial resources, stronger consolidated revenue and profitability, diversification in product portfolio and thereby reducing business risks;*
- 3.5 *Pooling of assets, proprietary information, personnel, financial, managerial and technical resources of the Companies, thereby contributing to the future growth of the merged entity;*
- 3.6 *Consolidating and improving the internal systems, procedures and controls will also bring greater management and operational efficiency due to integration of various similar functions presently being carried out in each individual entity within the group such as information technology, human resources, finance, legal and general management, and this will lead to the organization becoming more efficient and capable of responding swiftly to volatile and rapidly changing market scenarios;*
- 3.7 *Simplicity in working, reducing various statutory and regulatory compliances and related costs, which presently have to be duplicated in the Companies, reduction in operational and administrative expenses and overheads, better cost and operational efficiencies and it would also result in coordinated optimum utilization of resources;*
- 3.8 *The Transferor Companies and the Transferee Company 2 operate businesses that complement each other and therefore*



*can be conveniently combined for mutual benefit of the shareholders of the Companies; and*

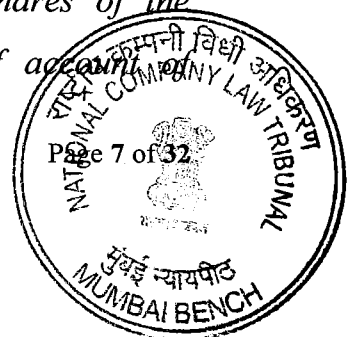
3.9 *This Scheme shall be in the beneficial interest of all the stakeholders and the shareholders of the Companies.*

*In these circumstances, it is considered desirable and expedient to amalgamate the Transferor Companies with the Transferee Company 2 in the manner and on the terms and conditions stated in this Scheme.”*

7. There are two consideration clauses in the Scheme, one for the merger of the First Petitioner Company with the Second Petitioner Company (Clause 15) and a second clause dealing with the consideration for the merger of the Second Petitioner Company with the Third Petitioner Company (Clause 24), which are reproduced below:

**“15. CONSIDERATION**

*Since the entire paid-up equity share capital of Transferor Company 1 is held directly by Transferee Company 1, no shares of Transferee Company 1 will be issued or allotted to the shareholders of the Transferor Company 1 in consideration for Amalgamation of Transferor Company 1 with Transferee Company 1. Upon this Scheme becoming effective, the entire issued, subscribed and paid up share capital of Transferor Company 1 (whether through a nominee) shall, ipso facto, without any further application, act or deed stand cancelled. Consequently, due to nil consideration, there shall not be any stamp duty payable. The investments in the shares of the Transferor Company 1, appearing in the books of account of*

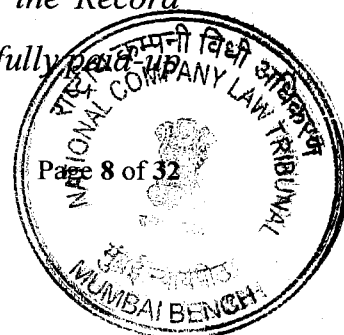


*Transferee Company 1 shall without any further act or deed, stand cancelled.*

## **24. CONSIDERATION**

*24.1 Upon this Scheme becoming effective, in consideration for the Amalgamation of the Transferor Company 2 with the Transferee Company 2, the Transferee Company 2 shall without any further application or deed, issue and allot to the equity shareholders of the Transferor Company 2 (whose names appear in the register of members or register of beneficial owners maintained by the registrar and transfer agent as on the Record Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be), the equity shares of the Transferee Company 2 in accordance with their respective entitlement in the ratio of 4:1 ("**Share Exchange Ratio**"), meaning thereby that upon this Scheme becoming effective, the Transferee Company 2 shall without any further application or deed, issue and allot 4 (Four) fully paid up equity shares of Transferee Company 2 of INR 10 (Indian Rupees 10) each, for 1 (One) fully paid equity share of INR 10 (Indian Rupees Ten) each held by such shareholder in Transferor Company 2 as on the Record Date.*

*Upon this Scheme becoming effective, the Board of the Transferor Company 2 shall, on the Record Date, provide to Transferee Company 2, a list containing particulars of equity shareholders of the Transferor Company 2 as on the Record Date, along with their respective entitlement to the fully paid up equity shares of Transferee Company 2 of INR 10 (Indian Rupees 10) each, for 1 (One) fully paid equity share of INR 10 (Indian Rupees Ten) each held by such shareholder in Transferor Company 2 as on the Record Date.*





*equity shares of the Transferee Company 2, pursuant to this Scheme.”*

8. Similarly, the Scheme also provides for Dissolution of the First Petitioner Company (Clause 18) and Second Petitioner Company (Clause 30) respectively

**“18. DISSOLUTION OF THE TRANSFEROR COMPANY 1**

*On the Effective Date, the Transferor Company 1 shall be automatically dissolved without being wound up. Consequently, the name of Transferor Company 1 shall be struck off from the records of the relevant Registrar of Companies. Upon this Scheme becoming effective and after dissolution of the Transferor Company 1, the Board of Directors of the Transferee Company 1 or any committee thereof is hereby authorized to take all steps as may be necessary or desirable or proper on behalf of the Transferor Company 1 from the Effective Date to resolve any question, doubts, or difficulty whether by reason of any order(s) of the court(s) or any directive, order or sanction of any Appropriate Authority or otherwise arising out of or under this Scheme or any matter therewith.*

.....

**30. DISSOLUTION OF THE TRANSFEROR COMPANY 2**

*On the Effective Date, the Transferor Company 2 shall be automatically dissolved without being wound up. Consequently, the name of Transferor Company 2 shall be struck off from the records of the relevant Registrar of Companies. Upon this Scheme*

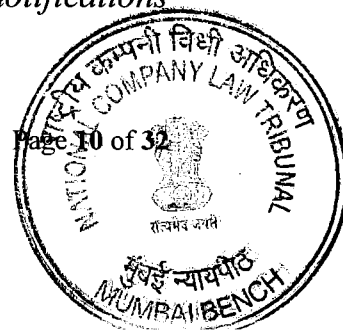


*becoming effective and after dissolution of the Transferor Company 2, the Board of Directors of the Transferee Company 2 or any committee thereof is hereby authorized to take all steps as may be necessary or desirable or proper on behalf of the Transferor Company 2 from the Effective Date to resolve any question, doubts, or difficulty whether by reason of any order(s) of the court(s) or any directive, order or sanction of any Appropriate Authority or otherwise arising out of or under this Scheme or any matter therewith.”*

9. The Scheme also provides for the listing of the Shares of the Third Petitioner Company, subsequent to the sanction of the Scheme (Clause 27) and continued listing of the NCDs (Clause 28), which is reproduced below:

**“27. LISTING OF THE SHARES OF THE TRANSFEEE COMPANY 2**

*27.1. The equity shares to be issued to the shareholders of Transferor Company 2 by the Transferee Company 2 under Clause 0 of Part D will be listed and admitted for trading and the Transferee Company 2 shall and take all steps to get all the equity shares issued pursuant to this Scheme, listed on the Stock Exchanges on which the equity shares of the Transferor Company 2 are listed, in accordance with the provisions of Applicable Laws including in particular the LODR Regulations, SEBI Circular and other circulars, notifications and rules issued by SEBI from time to time.*



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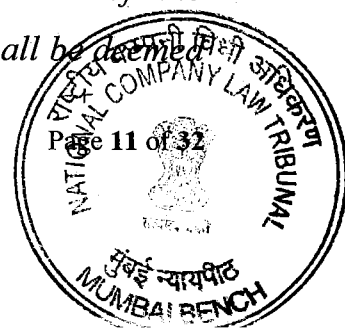
**28. LISTING OF THE NCDs**

*Subject to the requirement, if any, imposed or concession, if any, by BSE Limited, and other terms and conditions agreed with BSE Limited, the NCDs which shall stand transferred to the Transferee Company 2 pursuant to Clause **Error! Reference source not found.** of this Scheme, shall be listed and admitted to trading on the Wholesale Debt Market Segment of BSE Limited, where the NCDs are currently listed.”*

10. The Scheme also provides for a change of name of the Third Petitioner Company (Clause 32), which is reproduced below:

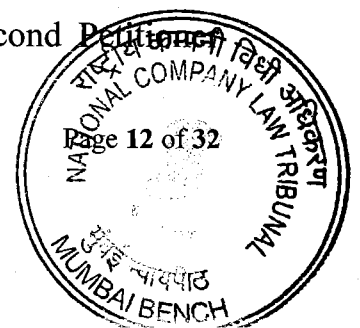
**“32. CHANGE OF NAME OF THE TRANSFEREE COMPANY2**

*Upon this Scheme becoming effective, the name of Transferee Company 2 shall be deemed to have been changed from “Gateway Rail Freight Limited” to “Gateway Distriparks Limited” or “Gateway Rail Distriparks Limited”, or such other name which is available and approved by the Registrar of Companies, in accordance with Sections 13 and 14 of the Act and read with other relevant provisions of the Act, as applicable. The MOA and AOA of the Transferee Company 2 shall, without any further act, instrument or deed, be and stand altered, modified and amended, and the consent of the shareholders of the Companies to the Scheme shall be deemed*



*to be sufficient compliance for the purposes of effecting the name change and that no separate act, procedure, resolutions and registration fees shall be required to be followed under the Act.”*

11. The Learned Counsel for the Petitioner Companies submits that the Company Petition is filed in consonance with Section 230 to 232 and other applicable provisions of the Companies Act, 2013 and the Order dated 28 July 2021 passed in the CA (CAA) No. 54/MB/2021 (“**said Order**”) by this Tribunal.
12. The Learned Counsel for the Petitioner Companies submits that on 28 October 2021, the Company Petition was heard for admission and the date for hearing and final disposal was fixed as 26 November 2021. The Petitioner Companies were directed to cause publication of the advertisement for final hearing of this matter at least 10 (ten) clear days before the date fixed in ‘*Business Standard*’ in English language and Marathi translation thereof in ‘*Sakal*’. The Petitioner Companies caused publication in the said newspapers on 15 November 2021.
13. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have also issued notices to the concerned regulatory authorities indicating the date of final hearing. All the said notices have been issued and hand-delivered on 16 November 2021 to (i) the Central Government through the Regional Director, Western Region, Ministry of Corporate Affairs; (ii) the Registrar of Companies at Mumbai; (iii) the Income Tax Authority concerned within whose jurisdiction the respective Petitioner Companies are assessed to tax; (iv) Reserve Bank of India (in the case of the Second Petitioner)



Company); (v) Official Liquidator (in the case of the First Petitioner Company and Second Petitioner Company); (vi) BSE Limited (in the case of the Second Petitioner Company); and (vii) NSE Limited (in the case of the Second Petitioner Company). Further, as directed, public advertisements were also issued in the newspapers in English and Marathi. The Petitioner Companies have filed a Compliance Report on 22 November 2021 evidencing the publication and service of notices.

14. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal.
15. The Regional Director has filed its Report dated 24 November 2021 ("**Report**") enlisting their observation to the Scheme, praying that the said observations made at in Paragraphs IV (a) to (r) be considered by this Tribunal. In para IV of the Report, RD has stated:

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under: -*

- (a) *In addition to compliance of AS-14 (IND AS-103), the transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*
- (b) *As per Part-A-Definitions Clause 5(5.1.5 & 5.1.6), 5(5.1.10) & 5(5.1.18) of the Scheme.*

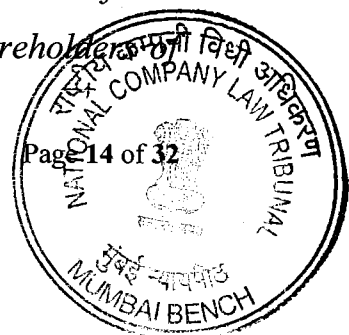


**"Appointed Date1"** means opening of business hours on 1 April 2020, as assented to and approved by the Board of Directors of the Transferor Company 1 and Transferee Company 1 or such other date as may be directed by the NCLT or other Appropriate Authority, as may be applicable, being the date from which the provisions of Part C of this Scheme shall become operational;

**"Appointed Date 2"** means opening of business hours on 1 April 2020, as assented to and approved by the Board of Directors of the Transferor Company 2 and Transferee Company 2 or such other date as may be directed by the NCLT or other Appropriate Authority, as may be applicable, being the date from which the provisions of Part D of this Scheme shall become operational immediately after giving effect to the amalgamation of Transferor Company 1/GEIPL with Transferee Company 1/GDL as set out in Part C of this Scheme;

**"Effective Date"** or "upon this Scheme becoming effective" means the last date on which the certified copy of the order of the NCLT sanctioning this Scheme is filed with the Registrar of Companies, Mumbai by the Transferor Company 1, Transferor Company 2 and the Transferee Company 2, as required under the provisions of the Act;

**"Record Date"** means the date fixed by the Board of Directors of the Transferor Company 2 / GDL or committee thereof, if any, in consultation with the Board of Directors of the Transferee Company 2 for the purpose of determining the shareholders



*Transferor Company 2 / GDL who shall be entitled to receive equity shares of the Transferee Company 2, as consideration as per Clause 24 of this Scheme;*

*In this regard, it is submitted that Section 232 (6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective, and the scheme shall be deemed to be effective from such date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*

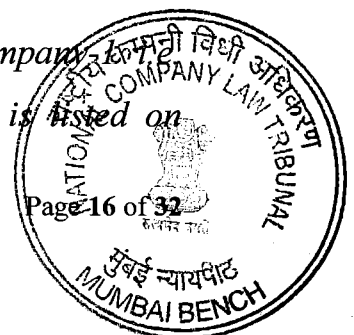
*Further, the Petitioners may be asked to comply with the requirements and clarified vide circular no. F. No. 7/12/2019/CL-1 dated 21 August 2019 issued by the Ministry of Corporate Affairs.*

- (c) *The Hon'ble Tribunal may kindly seek the undertaking that the Scheme is approved by the requisite majority of members and creditors as per Section 230 (6) of the Act in meetings duly held in terms of Section 230 (1) read with subsection (3) to (5) of Section 230 of the Act and the Minutes thereof are duly placed before the Tribunal.*
- (d) *Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/*



*any change/ changes are made, for changes If any, liberty be given to Central Government to file further report if any required;*

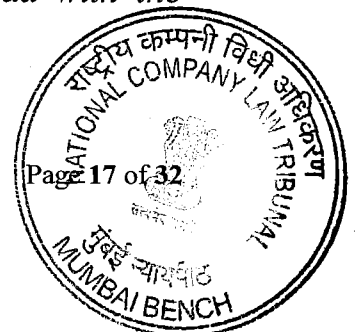
- (e) *The Petitioners under provision of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company(s).*
- (f) *Petitioner Companies have to undertake to comply with section 232(3) (i) of the Companies Act, 2013 where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section.*
- (g) *The Petitioner Companies may be directed to submit undertaking that the petitioner company shall ensure compliance of all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*
- (h) *Since the Transferor Company -2/Transferee Company -2/ Gateway Distribparks Limited, limited by shares, is listed on*





*Bombay Stock Exchange and the National Stock Exchange, the Petitioner Company be directed to place on record whether necessary approval from SEBI and the concerned Stock Exchange have been obtained and whether the meeting of the Shareholders/class of shareholders have been convened as per the listing /SEBI guidelines.*

- (i) *Since the Transferor Company-2/Transferee Company 1 i.e. Gateway Distriparks Limited have foreign/non-resident shareholders, therefore it is subject to the compliance of section 55 of the Companies Act, 2013 the FEMA Regulations//RBI Guidelines by the Transferee Company.*
- (j) *The Petitioner Companies be directed to place on record whether necessary NOC/approval from Competition Commission of India (CCI) have been obtained or not, if applicable.*
- (k) *As per Part-C Clause 16(16.1.1 to 16.1.8) of the Scheme (Accounting Treatment), (Amalgamation of Transferor Company 1 / GEIPL with Transferee Company 1 /GDL.) Upon this Scheme becoming effective, the Transferee Company 1 shall account for the amalgamation of the Transferor Company 1 in accordance with "Pooling of Interest Method" as laid down in Appendix C of Ind AS-103 (Business Combinations of entities under common control) notified under Section 133 of the Act read with the*

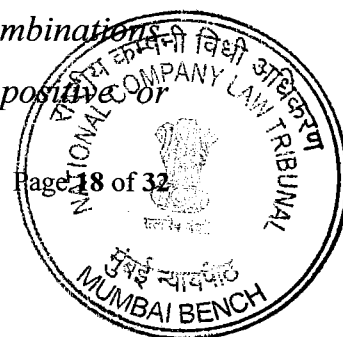


*Companies (Indian Accounting Standard) Rules, 2015 as may be amended from time to time, in its books of accounts.*

*In this regards it is stated that in Indian Accounting Standard (Ind-A5) 103 – prescribes application of pooling of Interest Method to account for common control business combinations. Under this method .... Any difference, whether positive or negative, shall be adjusted against the capital reserves (or “Amalgamation Adjustment Deficit Account” in some cases). In view of the above it is submitted that the difference so credited to “Capital Reserve arising out of Amalgamation” shall not be available for distribution of dividend and other similar purposes.*

- (l) *As per Part-D Clause 25(25.1.1 to 25.1.9) of the Scheme (Accounting Treatment), (Amalgamation of Transferor Company 2 / GDL with Transferee Company 2 /GRFL.) Upon this Scheme becoming effective, the Transferee Company 2 shall account for the amalgamation of the Transferor Company 2 in accordance with “Pooling of Interest Method” (after giving effect to Clause 16 of part C above) as laid down in Appendix C of Ind AS-103 (Business Combinations of entities under common control) notified under Section 133 of the Act read with the Companies (Indian Accounting Standard) Rules, 2015 as may be amended from time to time, in its books of accounts.*

*In this regards it is stated that in Indian Accounting Standard (Ind-A5) 103 – prescribes application of pooling of Interest Method to account for common control business combinations. Under this method .... Any difference, whether positive or*



*negative, shall be adjusted against the capital reserves (or “Amalgamation Adjustment Deficit Account” in some cases). In view of the above it is submitted that the difference so credited to “Capital Reserve arising out of Amalgamation” shall not be available for distribution of dividend and other similar purposes.*

*(m) As per Part-D Clause 26 (26.1 to 26.3) of the Scheme (Aggregation And Increase of Authorized Share Capital of Transferee Company 2); In this regard it is submitted that the transferee company to comply with the provisions of Section 13, Section 61, Section 64 and Section 232(3) (i) of the Companies Act, 2013 further if any stamp duty is payable the same should be paid in accordance with applicable laws of the State;*

*(n) As per Part D Clause 32(32.1 to 32.3) of the Scheme, (Change the name of the Transferee Company-2) Upon this Scheme becoming effective, the name of the Transferee Company 2 shall be deemed to have been changed from “Gateway Rail freight Limited to “Gateway Distriparks Limited” or “Gateway Rail Distriparks Limited”, or such other name which is available and approved by the Registrar of Companies, in a accordance with Sections 13 and 14 of the Act and read with other relevant provisions of the Act, as Applicable.*

*That the adoption of new name of Transferor Companies by the Transferee Company shall create confusion in the minds of general public and other stakeholders. Besides it will also create confusion with that regulators like Income Tax, GST, MCA etc.*

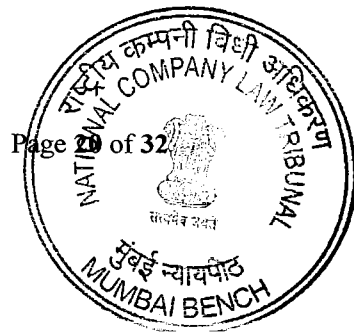


*which give impression that Transferor Companies are still in existence however it is not in existence.*

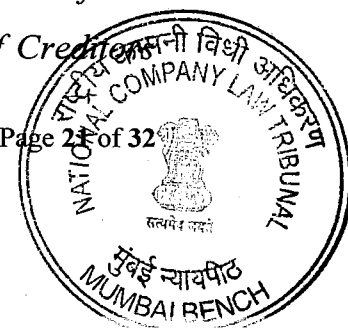
*In this regards, as per clause 8(2)(8) of the Companies (Incorporation) Rule,2014, "The name released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other Company including the group company of the Company who has changed the name for the period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.*

*Hence, the Transferee Company i.e. "Gateway Rail Freight Limited" not be allowed to change its name by the name of Transferor companies i.e. "Gateway Distriparks Limited " or "Gateway Rail Distriparks Limited" and Petitioner Companies have to amend the scheme according.*

- (o) *As regards Par-D Clause 33(33.1 to 3.1J) of the Scheme (Amendment to the Objects Clause of the MOA of Transferee Company 2) (Amalgamation of Transferor Company 2 / GDL With Transferee Company 2/ GRFL), Upon the Scheme becoming effective, the Object Clause of Memorandum of Association of Transferee Company will be altered. In this regard it is submitted that Hon'ble Tribunal may kindly direct the petitioner to comply with provisions of section 13 of the Companies Act, 2013 and to file necessary e-forms with ROC Mumbai with requisite filing fee.*



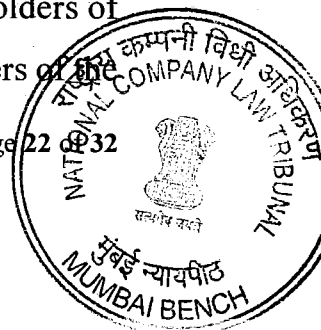
- (p) *As Transferor Company-2 i.e. Gateway Distriparks Limited a listed company is merging with Transferee Company-2 Gateway Rail Freight Limited an unlisted Company. In this regard the Petitioner Companies be directed give undertake, the shares of the transferee company will be listed after sanction of the Scheme.*
- (q) *As regards the Income Tax Department letter dated 03-09-2021 indicated at para 25 above, under the head - Income Tax letter, it is submitted that the Petitioner Companies be directed to mention all the facts in this regard about Income Tax Department letter (clarification/evidence) and explain about the queries made therein, before approval of the Scheme. However, as per the Financial Statement as at 31-03-2021 the Transferor Company No.2 / Transferee company No 1 i.e. Gateway Distriparks Limited is having Income Tax Liabilities of Rs.271.96 Lakh (Nil in the Financial Year 2019-20). In this regard the Petitioner Companies be directed to undertake to discharge the Income Tax liabilities before approval of the Scheme. Further, the Income Tax Department be heard in the matter before approval of the Scheme.*
- (r) *In view of the observation raised by the ROC Mumbai mentioned at para 27 above, Hon'ble NCLT may pass appropriate orders/orders as deem fit. However, as regard to observation 3 & 4 of the ROC, Mumbai report, the Petitioner Companies may be directed to place on records that how the Transferee Company shall achieve the object/rational of the Scheme. The Transferor Companies are also having huge outstanding dues of Creditors.*



*and other Current Liabilities and Employee Benefits Obligations will not affect the solvency of the Transferee Company.”*

16. In response to the above observations of the Regional Director, the Learned Counsel submits that the Petitioner Companies have filed an Affidavit dated 24 November 2021, which has been duly served to the office of the Regional Director. The Learned Counsel submits that all the observations of the Regional Director have been responded to, inter alia, as follows:

- a. As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to pass such accounting entries which are necessary in connection with the Scheme to comply with all applicable accounting standards including IND AS-8 to the extent applicable under law.
- b. As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Petitioner Companies submit that as set out in the Scheme, the Appointed Date 1 and 2 are the opening of business hours on 1 April 2020. The Petitioner Company undertakes to comply with the requirements of circular no. F. No. 7/12/2019/CI-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.
- c. As far as the observations made in paragraph IV (c) of the Report of the Regional Director is concerned, 100% of the shareholders of the First Petitioner Company and 99.85% of the shareholders of the



Third Petitioner Company have given consent to the sanction of the Scheme. Copies of such consents are annexed to the captioned Company Application as Exhibit A-20 colly and A-23 colly respectively. In view of the above, meetings of the shareholders of the First and Third Petitioner Companies were dispensed with by Order dated 28 July 2021 passed by this Hon'ble Tribunal. Further, as directed by the Hon'ble Tribunal, on 25 August 2021 individual notices were issued to the 2 equity shareholders of the Third Petitioner Company at their last known email address as per records of the Third Petitioner Company. Till date there has been no objection or response. As far the Second Petitioner Company is concerned, as directed by this Hon'ble Tribunal in its Order dated 28 July 2021, a meeting of the shareholder of the Second Petitioner Company was held on 28 September 2021, whereas the Scheme was duly approved by 362 equity shareholders (in number) of the equity shareholders holding 99.9982% (in value) of the equity shares who have participated through postal ballot including remote e-voting and e-voting during the meeting. The Petitioner Companies have obtained consents of 100% of their respective secured creditors. Vide Order dated 28 July 2021 passed in the captioned Company Application, this Hon'ble Tribunal was pleased to dispense with meetings of the unsecured creditors of the Petitioner Companies and directed notices be issued in terms of the said Order and public advertisement to be made. The Petitioner Companies have complied with the same, and necessary compliance report has also been filed. None of the unsecured creditors of the Petitioner Companies have objected to the Scheme till date.

- d. As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Petitioner Companies confirm that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy / any change /changes made.
- e. As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Companies state that notices have been issued to the concerned authorities under Section 230(5) of the Companies Act, 2013. Necessary compliance report dated 23 September 2021 has been filed before this Hon'ble Tribunal in that regard. The Petitioner Companies confirm that the mere sanction of the Scheme will not prevent the authorities from making any decisions, as per law and any such decision of such authorities if taken, will be dealt with as per law.
- f. As far as the observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with Section 232(3)(i) of the Companies Act, 2013 and upon implementation of the Scheme and clubbing of authorized share capital of the Transferor Companies with the Transferee Company, the fees if any paid by the Transferor Companies shall be set off against the fees payable by the Transferee Company on its authorized share capital subsequent to its amalgamation.





- g. As far as the observations made in paragraph IV (g) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the applicable provisions of the Income-tax Act, 1961, including Section 2(1B) or any amendments thereto.
- h. As far as the observations made in paragraph IV (h) of the Report of the Regional Director is concerned, the Second Petitioner Company submits that SEBI has through the stock exchanges, namely NSE and BSE given their observations and no objection to the Scheme vide their letters dated 12 March 2021 which are annexed to the Company Petition as Exhibits A-11 and A-12 respectively. The Petitioner Companies confirm that they will comply with and necessary observations of SEBI and the Stock Exchanges to the extent applicable. The Second Petitioner Company submits that the meeting of the equity shareholders of the Second Petitioner Company has been convened on 28 September 2021 as per the directions of this Hon'ble NCLT and the listing / SEBI guidelines.
- i. As far as the observations made in paragraph IV (i) of the Report of the Regional Director is concerned, the Second Petitioner Company confirms and undertakes to comply with Section 55 of the Companies Act, 2013 and FEMA Regulations / RBI Guidelines, to the extent applicable.
- j. As far as the observations made in paragraph IV (j) of the Report of the Regional Director is concerned, the Petitioner Companies state that there is no legal requirement for an NOC / approval from



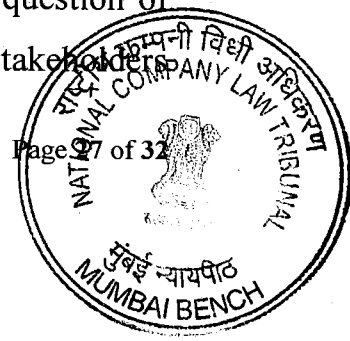
the Competition Commission of India (CCI) to the Scheme, inter alia, for the reasons more specifically set out in the Affidavit dated 24 November 2021 filed by the Petitioner Companies, in response to the report filed by the Regional Director.

- k. As far as the observations made in paragraph IV (k) of the Report of the Regional Director is concerned, the First Petitioner Company submits that the accounting treatment provided under the Scheme is in accordance with applicable law. The First Petitioner Company further undertakes to comply with the Indian Accounting Standards to the extent applicable. The First Petitioner Company further undertakes that the difference credited to the “Capital Reserve arising out of Amalgamation” will not be available for distribution of dividend and other similar purposes.
- l. As far as the observations made in paragraph IV (l) of the Report of the Regional Director is concerned, the Second Petitioner Company submits that the accounting treatment provided under the Scheme is in accordance with applicable law. The Second Petitioner Company further undertakes to comply with the Indian Accounting Standards to the extent applicable. The Second Petitioner Company further undertakes that the difference credited to the “Capital Reserve arising out of Amalgamation” will not be available for distribution of dividend and other similar purposes.
- m. As far as the observations made in paragraph IV (m) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 13, 61, 64 and



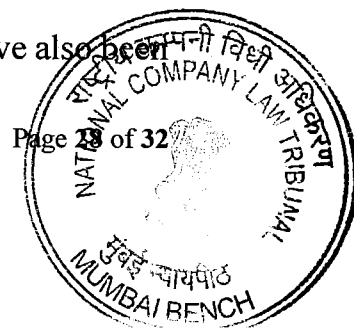
232(3)(i) of the Companies Act, 2013 to the extent applicable, given that there is a single window clearance granted whilst sanctioning the Scheme. The Petitioner Companies undertakes to make payment of the stamp duty payable as per the provision of law.

- n. As far as the observations made in paragraph IV (n) of the Report of the Regional Director is concerned, the Petitioner Companies submit that a mere perusal of Rule 8 of Companies (Incorporation) Rules, 2014, that this Hon'ble Tribunal is competent and duly empowered to permit change in the name of the Third Petitioner Company from "Gateway Rail Freight Limited" to "Gateway Distriparks Limited" or "Gateway Rail Distriparks Limited" in the course of a compromise, arrangement and amalgamation. The Third Petitioner Company submits that the equity shareholders of the Third Petitioner Company have given their consent to the sanction of the Scheme which includes change of name of the Third Petitioner Company. Pursuant to the Scheme being sanctioned, the Second Petitioner Company will merge with the Third Petitioner Company and stand dissolved, without being wound up. The Second Petitioner Company has generated sufficient goodwill in its name, and the Petitioner Companies desire to continue to use the name of the Second Petitioner Company even after the Scheme has been sanctioned. It is further submitted that the Petitioner Companies are all part of the same group and are operating in similar line of businesses which are complementary in nature. As such, even after sanction of the Scheme, there is no question of creating confusion in the minds of the general public, stakeholders



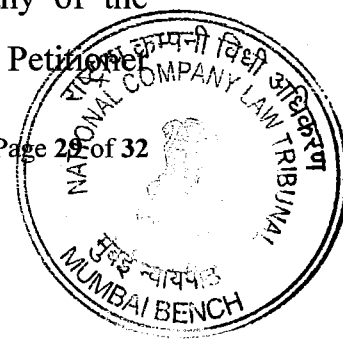
or regulators. It is submitted that this is a just and fit case for this Hon'ble Tribunal to grant sanction to the change of name as provided for in the Scheme and no prejudice will be caused to any of the stakeholders or regulators. The Petitioner Companies undertake to comply with the applicable procedural requirements, including fillings of requisite forms with the Registrar of Companies in respect of the proposed name change in accordance with law.

- o. As far as the observations made in paragraph IV (o) of the Report of the Regional Director is concerned, the Petitioner Companies undertake to comply with the provisions of Section 13 of the Companies Act, 2013 to the extent applicable and to file necessary forms with the Registrar of Companies along with payment of the requisite fees as required under law.
- p. As far as the observations made in paragraph IV (p) of the Report of the Regional Director is concerned, the Petitioner Companies undertake that subsequent to the sanction of the Scheme, they shall take such steps and efforts as are necessary to seek listing of the shares of the Third Petitioner Company as contemplated under the Scheme.
- q. As far as the observations made in paragraph IV (q) of the Report of the Regional Director is concerned, the Petitioner Companies have issued notices to the concerned Income Tax authorities having jurisdiction over the concerned Companies intimating them about the Scheme. The concerned Income Tax Authorities have also been



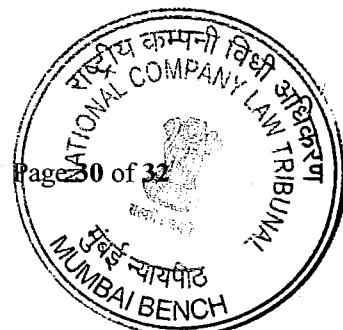
intimated about the date of the final hearing of the present Company Petition. Necessary Compliance Reports have been filed in this regard. Certain clarifications were sought by the Income Tax authority from the Second Petitioner Company, which have been duly responded to and no further clarifications or objections have been raised by the Authorities. With respect to the dues of the Petitioner Companies, the Petitioner Companies submit that pursuant to the Scheme, the income tax dues of the First and Second Petitioner Company, if any, will be payable by the Third Petitioner Company and met with as per law in the ordinary course. As such, the Income Tax authority will not be prejudiced in any manner by the sanction of the Scheme and any demand will be dealt with by the Third Petitioner Company as per law in the ordinary course.

- r. As far as the observations made in paragraph IV (r) of the Report of the Regional Director is concerned, the Petitioner Companies submit that by the merger of the Petitioner Companies, the consolidation of the business presently being carried out will create greater operational synergies and efficiencies to the operations of the companies. The Petitioner Companies have explained in detail the rationale and objects of the Scheme, in the Company Petition and in the Affidavit dated 24 November 2021 filed by the Petitioner Companies, in response to the report filed by the Regional Director. 100% of the Secured Creditors of the Petitioner Companies have provided their consent to the Scheme. Unsecured creditors have been issued individual notices and also public notice has been given. There have been no objections received by any of the creditors despite such notices and publication. The Petitioner

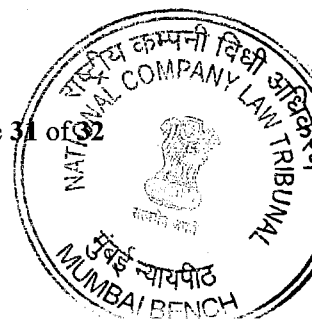


Companies submit that all liabilities will be met in the ordinary course of business and there is no diminution / compromise proposed by the Scheme. As such, the creditors interest is duly protected.

17. The advocate for the Petitioner Company submits that the Regional Director has filed a Supplementary Report dated 25 November 2021 reiterating its concerns as to para IV(n) and left it to this Hon'ble Tribunal to pass appropriate orders as deemed fit on merit in the matter as far as paras IV (q) and (r) of its report are concerned. The Regional Director has not raised any other objections or dealt with any other observations set out above and dealt with in the Affidavit dated 24 November 2021 filed by the Petitioner Company in response to the report of the Regional Director. The Counsel for the Petitioner Company submits that it is apparent that the Regional Director is satisfied with the responses provided.
18. Further, the Official Liquidator *vide* his Report dated 22 November 2021 filed with the Hon'ble Tribunal, submits that the affairs of the First Petitioner Company and the Second Petitioner Company have been conducted in a proper manner. No objections have been raised with respect to the Scheme.
19. From the material on record, the Scheme annexed as Exhibit A-1 to the Company Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.



20. Since all the requisite statutory compliances have been fulfilled, CP (CAA) No. 172/MB/2021 is made absolute in terms of the prayer clauses 30 (a) to 30 (h) thereof. Further, upon the Scheme becoming effective, the name of Third Petitioner Company shall be changed to "*Gateway Distriparks Limited*", subject to the filing of the relevant forms and the payment of applicable fees to the appropriate authorities in accordance with law.
21. The Scheme is hereby sanctioned, with the Appointed Date 1 and 2 fixed as opening business hours of 1 April 2020 as defined under the Scheme.
22. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, within 30 days from the date of receipt of the certified copy Order by the Petitioner Companies.
23. The Transferee Company to lodge a copy of this Order along with the Scheme duly authenticated/certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified Order from the Registry of this Tribunal.
24. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.



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

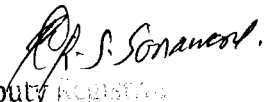
CP (CAA) No. 172/MB/2021 CONNECTED WITH  
CA (CAA) No. 54/MB/2021

25. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
26. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
27. Ordered accordingly.

Sd/-  
Anuradha Sanjay Bhatia  
Hon'ble Member (T)

Sd/-  
Suchitra Kanuparthi  
Hon'ble Member (J)

Certified True Copy  
Date of Application 08.12.2021  
Number of Pages 32  
Fee Paid Rs. 160  
Applicant called for copy 20.12.2021  
Copy prepared on 20.12.2021  
Copy Issued on 20.12.2021

  
Deputy Registrar  
National Company Law Tribunal, Mumbai Bench

