

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

**C.P. (CAA) No. 1084 of 2020
CONNECTED WITH
C.A. (CAA) No. 1058 of 2020**

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

AND

In the matter of Scheme of Arrangement amongst Primesec Investments Limited (“Transferor Company 1”) and Prime Commodities Broking (India) Limited (“Transferor Company 2”) and Prime Securities Limited (“Transferee Company”) AND their respective shareholders.

PRIMESEC INVESTMENTS LIMITED

a company incorporated under the provisions of Companies Act, 1956 having its registered address at 1109/1110, Maker Chambers V, Nariman Point, Mumbai – 400 021, Maharashtra, India.

CIN: U67100MH2007PLC175947 The Transferor Company 1/
First Petitioner Company

PRIME COMMODITIES BROKING (INDIA) LIMITED

a company incorporated under the provisions of Companies Act, 1956 having its registered address at 1109/1110, Maker Chambers V, Nariman Point, Mumbai – 400 021, Maharashtra, India.

CIN: - U67120MH2006PLC161313 The Transferor Company 2/
Second Petitioner Company

PRIME SECURITIES LIMITED

a company incorporated under the provisions of Companies Act, 1956 having its registered address at 1109/1110, Maker Chambers V, Nariman Point, Mumbai – 400 021, Maharashtra, India

CIN: - **L67120MH1982PLC026724***The Transferee Company /
Third Petitioner Company*

Order delivered on 13.05.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearances (via video conferencing):

For the Petitioner(s): Mr. Hemant Sethi, Ms Vidisha Poonja i/b Hemant Sethi & Co., Advocates

For Regional Director: Ms. Rupa Sutar, Deputy Director in the office of Regional Director, Ministry of Corporate Affairs

For Official Liquidator: V.P. Katkar, Office of the Official Liquidator

Per Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. Heard the Learned Counsel for the petitioners. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Arrangement of Primesec Investments Limited ('PIL' or 'the Transferor Company 1') and Prime Commodities Broking (India) Limited ('PCBIL' or 'the Transferor Company 2') with and into Prime Securities Limited ('PSL' or 'the Transferee Company') and reduction of the share capital and reorganisation of reserves of the Transferee Company and their respective Shareholders.

3. The Learned Counsel for the Petitioner further submits the Introduction and Rationale for the Scheme of Arrangement

Primesec Investments Limited

The Transferor Company 1 is inter alia engaged in the business activities that includes restructuring advisory services which includes refinancing of debt, advisory assignments relating to insolvencies under the IBC cases, etc.

Prime Commodities Broking (India) Limited

The Transferor Company 2 is engaged in the business of providing services auxiliary to financial intermediation, except insurance and pension funding.

Prime Securities Limited

The Transferee Company is a SEBI registered Category I Merchant banker that focuses on all SEBI regulated activities including primary issuances of debt and equity, managing buy-backs and open offers, QIPs, preferential offers, etc.

Rationale of the Scheme:

- a) The Transferee Company owns the entire share capital in the Transferor Companies.
- b) Integration of the business of the Transferee Company and the Transferor Companies can provide benefits to the shareholders / stakeholders as under:
 - i) Reduction in the management overlaps due to operation of the multiple entities and more focused leadership;
 - ii) Reduction in multiplicity of legal and regulatory compliances, reduction in overheads, including administrative, managerial and other costs amongst all;
 - iii) Synergy benefits, such as, competitive edge, consolidation of businesses to combine growth opportunities to capitalize on future growth potential which would in-turn significantly help in efficient utilization of financial and operational resources; and
 - iv) Consolidation and simplification of the Group structure and reduction of administrative costs at the Group level;

- c) Reduction of capital and reorganisation of reserves of the Transferee Company in the manner set out in this Scheme can provide benefits to the shareholders / stakeholders as under:
- i) Under this Scheme, if approved, the Company will represent its true and fair financial position;
 - ii) The Scheme will enable the Company to explore opportunities for the benefit of the shareholders of the Company including in the form of dividend payment as per the applicable provisions of the Companies Act, 2013;
 - iii) The Scheme would not have any impact on the shareholding pattern and the capital structure of the Company;
 - iv) The Scheme will enable the Company to use the amount lying in the Capital Reserve, Securities Premium and General Reserve of the Company; and
 - v) The Scheme does not involve any financial outlay / outgo and therefore, would not affect the ability or liquidity of the Company to meet its obligations / commitments in the normal course of business. Further, this Scheme would also not in any way adversely affect the ordinary operations of the Company.

The Scheme is in the interest of the shareholders, creditors, lenders and various other stakeholders of the respective companies. It is not prejudicial to the interests of shareholders, creditors, lenders and various other stakeholders of the respective companies.

5. The Learned Counsel for the Petitioners states that the Transferor Company 1, Transferor Company 2 and Transferee Company have approved the Scheme of Arrangement by passing the Board Resolution in their meeting held on January 9, 2020. The Appointed Date fixed under the Scheme is April 1, 2020.
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Joint Company Scheme Petition have been filed in consonance with the order passed in Company Scheme Application Nos. 1058 of 2020 of National Company Law Tribunal, Mumbai Bench.

7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the relevant Rules made there under. The said undertaking is accepted.
8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its report dated March 1, 2021 with the Hon'ble NCLT, *inter alia* stating therein the observations on the Scheme as stated in paragraph IV (a) to (q) of the report. In response to the observation made by the Regional Director, the Petitioner Companies, vide affidavit dated March 2, 2021, have given necessary clarifications and undertakings. Further, in response to the affidavit filed by Petitioner Companies, the Regional Director has filed its supplementary report dated 12th March, 2021. The observations made by the Regional Director, clarifications and undertakings given by the Petitioner Companies and comments of Regional Director on the clarifications and undertakings given by the Petitioner Companies are summarized below:
- 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-2-Definitions and Share Capital Clause 1(1.1.3) & 1(1.17) of the Scheme "Appointed Date" means April 1, 2020; "Effective Date" means the last of the dates on which the conditions specified in Clause 4.3 are complied with. Any references in this Scheme to the date of "coming into effect of this Scheme" or "effectiveness of this scheme" or "Scheme taking effect" shall mean the Effective Date;*
- References in this Scheme to "the date of coming into effect of this Scheme" or "upon the Scheme becoming effective" shall mean the Effective Date; 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 and not a 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-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

- c. The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the requisite majority of members and creditors as per Section 230(6) of the 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 provisions 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 Company have to undertake to comply with section 232(3)(i) of 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 Company may be directed to submit undertaking that the petitioner company shall ensure compliance of the all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*
- h. As per of Part 2 Clause 2.6(2.6.4) of the Scheme (Accounting Treatment), The surplus / deficit of the value of the assets over liabilities and reserves of the Transferor Companies vested with and recorded Transferee Company (as mentioned in Clause 2.6.1 and 2.6.2 above) shall be transferred to the Capital Reserve and presented separately from other Capital Reserve in the books of Transferee Company. In this regards it is submitted that the surplus so created to “Capital Reserve arising out of Amalgamation” shall not be available for distribution of dividend and other similar purposes.*
- i. As per Part 2 Clause 2.7(2.7.1 to 2.7.4) of the Scheme (Combination of Authorized Share Capital); In this regard it is submitted that the transferee company to comply with the provisions of section 13, Section 14, Section 61 & Section 64 of the Companies Act, 2013 or any other application provision of the Act.*
- j. As per Part 3 Clause 3.1(3.1.1 to 7.7) of the Scheme (Reduction Capital and Reorganization of Reserves of Prime Securities Limited), (Utilization of Capital Reserve, Capital Redemption Reserve, Share Forfeiture Account and Securities Premium) Upon the Scheme becoming effective, the Transferee Company shall write off the debit balance in Profit and loss Account (after giving effect to Clause 2.6.2 of this Scheme) in the books of the Transferee Company as on the Appointed Date, against the following in the order of preference:*
- i. Capital Reserve;*
 - ii. Capital Redemption Reserve;*
 - iii. Share Forfeiture Account; and*
 - iv. Balance (if any) against Securities Premium*
- The utilization of the Capital Reserve, Capital Redemption Reserve, Share Forfeiture Account, and Securities Premium as aforesaid shall be effected as an integral part of the Scheme and the order of the NCLT sanctioning this Scheme shall be deemed to be an order under section 66 read with section 52 and other appli-*

cable provisions of the Act and no separate sanction under section 66 read with section 52 and other applicable provisions of the Act will be necessary. In this regard it is submitted that the Petitioner Company shall also comply the provisions of Section 66 read with Section 52 and other relevant provisions of the Companies Act, 2013.

- k. As per Part 3 Clause 3.2(3.2.2 & 3.2.3) of the Scheme (Reclassification of General Reserves), Upon the Scheme becoming effective, the entire amount standing to the credit of the General Reserve Account of the Company as on the Appointed Date shall be reclassified and credited to the Profit and Loss Account of the Transferee Company.*

The amount credited to the Profit and Loss Account pursuant to Clause 3.2.2 above shall be reclassified as and constitute to be accumulated profits of the Transferee Company for the previous financial year, arrived at after providing for depreciation in accordance with the provisions of the Act and remaining undistributed in the manner provided in the Act and other applicable laws. The amount so reclassified in the Profit and Loss Account shall be available for distribution to the equity shareholders of the Transferee Company, from time to time, by the Board of Directors of the Transferee Company, at its sole discretion, in such manner, quantum and at such time as the Board of Directors may decide. In this regard it is submitted that this is against the provision of the Companies Act. Any amount once transferred to Reserve cannot be transferred back to Profit and Loss Account. As per Section 123(1) of the Companies Act, 2013 read with rule 3 of Companies (Declaration and Payment and Dividend) Rule, 2014 stipulate about drawing from the accumulated reserve for the purpose of Declaration of Dividend. Hence, the proposed transfer of amount to Profit and Loss Accounts is against rules.

- l. Since the Transferee Companies have nonresident 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.*

- m. Transferor Company at Sr. No. 1 is Investment Company and Transferor Company No. 2 and Transferee Company appears NBFC Company, hence the Petitioner Companies be directed to*

place on record whether the NOC from RBI is required to be obtained or not and whether RBI has been issued any notice, if so details of the same be placed on record.

- n. The Petitioner Company may be directed to submit undertaking that the petitioner company shall ensure compliance of the all provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*
 - o. The equity shares of Prime Securities Limited (Transferee Company) are currently listed on BSE Limited and the National Stock Exchange of India Limited and the provisions of section 230(5) of the Companies Act, 2013 r/w rule 8 of The Companies (Compromise, Arrangement and Amalgamations) Rules, 2016 Hon'ble NCLT may issue notice to other sectoral regulators or authorities (The Securities and Exchange Board of India, Bombay Stock Exchange Limited and National Stock Exchange of India and/or pass appropriate order/orders as deem fit.*
 - p. As regards the complaints indicated at para 21 above, under the head – Status of Compliant as per MCA – e Service – Screen Shot, it is submitted that the petitioners be directed to mention all the facts in this regard about complaints and explain about the allegations made therein, before approval of the scheme.*
 - q. In view of the observation raised by the ROC Mumbai, mentioned at para 22 above Hon'ble NCLT may pass appropriate orders / orders as deem fit;*
9. In response to the Report filed by the Regional Director, the Petitioner Companies have filed rejoinder and clarified as under:
- a. As far as the observation of the Regional Director, as stated in paragraph IV(a) of the report is concerned, the Petitioner Companies submits that in addition to compliance of 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 IND AS-8 etc.*
 - b. As far as the observation of the Regional Director, as stated in paragraph IV(b) of the Report is concerned, the Petitioner Companies submits that the Appointed Date would be April 1, 2020 as mentioned in Clause 1.1.3. of Part 1- Definitions and Share Capital of the Scheme which is in compliance with Section 232(6) of*

the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. Further, the Petitioner Companies undertake to comply with the requirements clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.

- c. *In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submit that in pursuance of the directions contained in Order delivered on 10th November, 2020 this Hon'ble Tribunal in the Company Scheme Application No. 1058 of 2020, and based on the Consent Affidavit from its Holding Company representing 100% shareholding in the First Petitioner Company and Second Petitioner Company, the First Petitioner Company and Second Petitioner Company were not required to hold the Equity Shareholder's meeting. There are no Secured Creditors in the First Petitioner Company and Second Petitioner Company. Pursuant to the above-mentioned Order delivered by the Mumbai Bench of Hon'ble Tribunal on 10th November, 2020, meeting of the Unsecured Creditors of First Petitioner Company and Second Petitioner Company was dispensed with based on the fact that requisite majority of Unsecured Creditors of First Petitioner Company and Second Petitioner Company have filed their consent affidavits. Further, in pursuance of the directions contained in Order delivered on 10th November, 2020 passed by this Tribunal in the Company Scheme Application No. 1058 of 2020, the Third Petitioner Company was not required to hold either shareholders' meeting or Secured and Unsecured Creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by the Hon'ble High Court of Judicature at Bombay in the case of *Maahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases* page 16 to 18 which inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the Transferor Company, being a wholly owned subsidiary of the Transferee Company and the creditors of the Transferee Company, are not likely to be affected by the Scheme, a separate Petition by the Transferee Company was not necessary. Similar view has also been taken by the Delhi High Court in the case of *Sharat Hardware Industries P.**

Ltd., in re (1978) 48 Com Cas 23, Hon'ble High Court of Madras in the case of Santhanalakshmi Investments (P) Ltd., In re (2005) 129 Company Cases page 789 to 792 and the Hon'ble High Court of Andhra Pradesh in the case of Nebula Motors Ltd., In re 45 SCL 143. This Hon'ble Tribunal in CSA No 243 of 2017 in the matter of Housing Development Finance Corporation Limited, in CSA No. 915 of 2017 in the matter of Godrej Consumer Products Limited, in CSA No. 899 of 2017 in case of Mahindra CIE Automotive Limited, in CSA No. 1019 of 2017 in case of Godrej Properties Limited, in CSA No. 1615 of 2018 in case of Dolvi Minerals and Metals Private Limited, in CSA No. 396 of 2019 in case of JSW Logistics Infrastructure Private Limited, in CSA No. 3123 of 2019 in case of Jai Realty Ventures Limited has taken a similar view.

- d. *In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes that Scheme enclosed to the Company Application and Company Petition are one and the same and there are no discrepancy/ changes made.*
- e. *As far as the observation of the Regional Director, as stated in paragraph IV(e) of the Report is concerned, the Petitioner Companies submits that in accordance with Section 230(5) of the Companies Act, 2013 and Order delivered by the Tribunal on November 10, 2020, the Petitioner Companies have served notices to all such relevant regulatory authorities. Also, the Petitioners have filed Affidavit of Service with the Tribunal in this regard. Further, the Petitioner Companies also undertake that any issues arising out of the Scheme will be met and answered in accordance with law.*
- f. *In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies submits that that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be in accordance with provisions of section 232(3)(i) of the Companies Act, 2013.*
- g. *In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all*

the provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.

- h. As far as the observation of the Regional Director, as stated in paragraph IV(h) of the Report is concerned, Petitioner Companies submit that that Capital Reserve created in the books of the Transferee Company as per Part 2 Clause 2.6 (2.6.4) of the Scheme (Accounting Treatment) pursuant to Amalgamation of Transferor Company 1 and Transferor Company 2 with and into the Transferee Company shall not be available for distribution of dividend and other similar purposes.*
- i. As far as the observation of the Regional Director, as stated in paragraph IV(i) of the Report is concerned, the Petitioner Companies submits that the Authorized Share Capital of the Transferor Companies shall be consolidated with that of the Transferee Company and will be in compliance with the provisions of section 13, Section 14, Section 61 & Section 64 of the Companies Act, 2013 or any other provision of the Act, to the extent applicable, in relation to Part 2 Clause 2.7 of the Scheme.*
- j. As far as the observation of the Regional Director, as stated in paragraph IV(j) of the Report is concerned, the Learned Counsel for Petitioner Companies submits that the debit balance in Profit and loss Account (after giving effect to Clause 2.6.2 of the Scheme) in the books of the Transferee Company as on the Appointed Date, shall be written off against Capital Reserve, Capital Redemption Reserve, Share Forfeiture Account, and balance (if any) against Securities Premium (in the order of preference). The utilization of the Capital Reserve, Capital Redemption Reserve, Share Forfeiture Account, and Securities Premium as aforesaid shall be effected as an integral part of the Scheme and the order of the NCLT sanctioning this Scheme shall be deemed to be an order under section 66 read with section 52 and other applicable provisions of the Act and no separate sanction under section 66 read with section 52 and other applicable provisions of the Act will be necessary.*
- k. As far as the observation of the Regional Director, as stated in IV(k) above is concerned, the Petitioner Companies submits that re-classification of General Reserves of the Third Petitioner Company and credit to Profit and Loss account of the Third Petitioner*

Company should not be in violation of the provisions of Companies Act, 2013 since there are no provisions under the Companies Act, 2013 that prohibit re-classification of general reserves to profit and loss account and therefore not in violation of section 123(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend Rules, 2014). Further, reliance can be placed on similar Schemes which are approved by the Hon'ble NCLT, Hyderabad Bench, in CP No 416 of 2016 in the case of International Paper APPM Ltd and by Hon'ble NCLT, Mumbai Bench, in TCSP No 151 of 2017 in the case of Hindustan Unilever Ltd.

- l. In so far as observations made in paragraph IV (l) of the Report of Regional Director is concerned, the Petitioner Companies states that the Scheme does not provide for issuance of shares to any shareholders and accordingly, compliance with section 55 of the Companies Act, 2013 and FEMA Regulations/RBI guidelines is not applicable.*
- m. As far as the observation of the Regional Director, as stated in IV(m) above is concerned, the Petitioner Companies submits that the Transferor Company 1 and Transferor Company 2 are not required to be registered with RBI as non-banking financial companies. Further, the Transferee Company is a SEBI registered Category I Merchant banker and is regulated by SEBI and therefore, is not required to register with RBI. Accordingly, the requirement of issuing any notice to RBI and obtaining their NOC does not arise.*
- n. As far as observations made in paragraph IV (n) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Scheme will be in compliance with the applicable provisions of the Income Tax Act, 1961 including provisions of section 2(1B) of the Income Tax Act.*
- o. As far as observation of the Regional Director, as stated in paragraph IV (o) of the report is concerned, the Petitioner Companies state that the Transferee Company has complied with the provisions of Section 230(5) of the Companies Act, 2013 by serving notices to the Securities and Exchange Board of India, BSE Limited and National Stock Exchange of India and have filed Affidavit of Service with the Tribunal in this regard.*

p. *As far as observations made in paragraph IV(p) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Third Petitioner Company had received an email from a shareholder on 19th September, 2019, extract of which is as under:*

“Sir,

This is to raise my concern / objection on the corporate governance being followed by our company.

You have last given a dividend in 2008. However, in the last 3 years, the managing director’s salary has moved from Rs.34.23 lacs to Rs.251.05 lacs and now proposed Rs.480.00 lacs (as proposed in the Agm notice) + Performance Bonus upto of Rs.260 lacs.

It seems that management is only rewarding itself and there is no consideration for the shareholders.

In my opinion the MDs salary increase should be kept in abeyance till the shareholders get a descent dividend. The business of the company does not require cash. Then why is there no distribution?”

The Third Petitioner Company has replied on 30th September, 2019 to the said shareholder, extract of which is as under:

“Dear Mr. Jain

This is with reference to your email dated September 19, 2019. Your letter to the Chairman has received serious attention by the Board members and on their behalf, I would like to respond as under:

Declaration of Dividend

The Dividend declaration has not been possible till date due to the provisions of the Companies Act in case of requirement of no accumulated losses in the books. As you would be aware, the Company had incurred losses in the period upto March 2013. Since then the management adopted a new business model that focused on fee based incomes that does not require deployment of capital. The new model has met with tremendous success, as the results for the last two years have shown.

The Company also had liabilities to lenders who extended their support during difficult times. In the five years since 2013, the

profits generated have been used to repay them. The Company is virtually debt free as of now. This trend of profitable operations should likely continue, hopefully resulting in the wiping out of accumulated losses. We are confident that based on financial performance, the Board will consider favourably your suggestion.

Managing Director's Salary

The resolution placed before the shareholders, noted by you, specifies the maximum limit for payment of remuneration to the Managing Director and was approved at the last AGM of the Company held on September 25, 2018. The resolution before the shareholders makes no change in this. The Board will decide the actual payment to be made within this limit based on performance. The remuneration for the current year (till March 31, 2020) is fixed at Rs. 260 lacs. The resolution further seeks to pay a performance-linked bonus of a maximum of Rs. 260 Lacs, with the actual amount to be decided by the Board within this overall limit, based on performance.

During the period of nearly four years from December 2012 till December 2016, in view of the adverse financial situation faced by the Company, it is important to note that the Managing Director was not paid any remuneration for four years. This was a voluntary decision on part of the MD – who pledged to turn the Company around.

Based on improving operations, the Board only reinstated the old salary (as of 2013) drawn by him, of Rs. 132 lacs, from January 2017. It is only last year, 2018-19 that the salary was increased to Rs. 250 lacs. This is proposed to be increased marginally to Rs. 260 lacs for 2019-2020 making an a small adjustment for inflation. This salary was arrived at after a bench marking the salaries of CEOs in the industry - and the proposed number is well below the industry average.

It is relevant to point out that during the period from March 31, 2012 to March 31, 2019, the market capitalization of the Company (shareholder wealth) has gone up nearly 10X from Rs. 11.25 Cr. on March 31, 2013 to Rs. 108.45 Cr. on March 31, 2019.

May we also reiterate that the Company has followed the necessary procedures for fixing the maximum limit of remuneration of the Managing Director, from time to time. This has been approved by the Board of Directors of the Company, after taking into consideration the experience and association of Managing Director with the Company and his critical contribution in the new business model, based on performance and approved by the Shareholders of the Company at the Annual General Meetings, as required under provisions of the Companies Act.

We wish to assure you that the board has always exercised caution while protecting shareholder interests and many data points are considered before any decision making.”

Further the Third Petitioner Company has received an email from the National Stock Exchange Limited of India Limited (“NSE”) in respect of the same query on 20th September, 2019 to which the Third Petitioner Company has replied on 30th September, 2019 enclosing the same reply sent to the concerned shareholder.

Thereafter, the Third Petitioner Company has not received any further query from the concerned shareholder, NSE or any other regulatory authorities.

q. Paragraph IV(q) of the Report of Regional Director is in relation to the observations raised by RoC, Mumbai, mentioned at para 22 of the report, extract of which is as under:

“As per ROC report para no.25 regarding any other complaints bearing on the scheme are pending in ROC office and remain not closed.

Yes. Complaint with SRN J00049545 is pending against the Transferee Company. There is a complaint from Shareholder about “the Company has last given a dividend in 2008. However, in the last 3 years, the Managing Director’s Salary has increased from Rs.133.18 lacs to Rs. 480.00 lacs (as proposed in the AGM notice) + Performance Bonus upto of Rs. 260 lacs.”

In relation to the above observation of RoC Mumbai, the Petitioner Companies submits that the above observation is the same as the observation made by the Regional Director at Paragraph IV(p) of his Report, which is already addressed by the Petitioner Companies.

“As per the ROC report para no. 29 regarding Scheme includes any reduction in paid up Share Capital if yes, give details:-

Yes, as per Part-3, Para 3 of the Scheme & Para 3.2 provides the reclassification of General Reserves under the Reduction of Capital and Reorganizations of Reserve of Prime Securities Limited

1. The Transferor Company No. 2 is following charges as per MCA Portal. Assets under Charge Amount Date of Creation Status Transferor Company 2, charge on Fixed Deposits with Banks 4,70,00,000 20/04/2018 Open

2. The Interest of the Creditors may be protected.”

The Petitioner Companies submits that the above charge on fixed deposits is on account of a temporary borrowing facility availed by the Transfer Company 2. As on date, there are no drawings from such facility nor there is any outstanding due to the bank on account of such facility.

10. In response to the said rejoinder, the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed its supplementary Report dated 12th March, 2021, Observation of the Regional director on the rejoinder filed by Petitioner Companies in Paragraph IV, of the said supplementary report states as follows:

- a. Reply of the Petitioners Companies appears to be satisfactory.*
- b. Reply of the Petitioners Companies appears to be satisfactory*
- c. Basis of submission made by the Regional Director the matter may be decided on merit.*
- d. In para d. to i. of the supplementary report of the Regional director is “Reply of the Petitioners Companies appears to be satisfactory.”*
- e. Para j. “On the basis of observations made by the Regional Director and reply submitted by the Petitioner Company thereon, Hon’ble Tribunal may pass appropriate orders/ orders as deem fit.”*
- f. Para k. “On the basis of observations made by the Regional Director and reply submitted by the Petitioner Company thereon, Hon’ble Tribunal may be pleased to direct as to how the Petition Companies is ensuring compliance of the Provision of Section 123(1) of the Companies Act, 2013 read with rule 3*

of Companies (Declaration and payment and Dividend) Rule, 2014.”

- g. Para l. and m. “On the basis of observations made by the Regional Director and reply submitted by the Petitioner Company thereon, Hon’ble Tribunal may pass appropriate orders/ orders as deem fit.”*
- h. Para n. and o. states that “Reply of the Petitioners Companies appears to be satisfactory.”*
- i. Para p. and q. “On the basis of observations made by the Regional Director and reply submitted by the Petitioner Company thereon, Hon’ble Tribunal may pass appropriate orders/ orders as deem fit.”*

11. The Official Liquidator has filed his report dated March 3, 2021 with the Hon’ble NCLT. In paragraph 5 (I) of the said report, the observation of the Official Liquidator on the proposed Scheme to be considered by the Hon’ble NCLT for First Petitioner Company are stated as under:

1) As per Independent Auditor’s Report annexed with the Balance Sheet as at 31.03.2017, the Auditors has mentioned the Basis for Qualified Opinion and further provided Qualified Opinion which are reproduced as follows:

Basis of Qualified Opinion

- a. As referred in Note 22(a) the Company has written back a secured loan of Rs. 4,052.11 lakhs, as in the opinion of the management the same was no longer payable. Accordingly, the profit for the year is higher, and the short-term borrowing is lower, by the said amount.*
- b. As referred in Note 22(b) the Company has not provided for interest of Rs. 1357.25 lakhs on secured loan in respect of period up to March 31, 2016, as in the opinion of the management the same is under renegotiations with the lender. Had the Company made a such provision in the earlier years. The reserve and surplus would have been lower by the said amount.*
- c. As referred in Note 23 the Company has written back certain unsecured loans and current liabilities of Rs. 620.57 lakhs, as in the opinion of the management the same was no longer payable. Accordingly, the profit for the year is higher, and the short-*

term borrowing and current liabilities are lower, by the said amount.

Qualified Opinion (by Statutory Auditor)

“In our opinion and to be the best of our knowledge and accordingly to the information and explanations give to us, except for the effects of the matters described in point nos a to c of the Basic for Qualified Opinion paragraph, the said financial statements given a true and fair view in conformity with the accounting principles generally accepted in India of the state of affairs of the Company as at March 31, 2017 and its profit and its cash flows for the year ended on the date”

- 2) *As per point no 7(b) of Annexure A to the Statutory Auditors Report annexed with the Balance Sheet as on 31.03.2020, there is a dispute amounting to Rs. 17.29 lakhs under the Income Tax Act, 1961 and the application for Rectification in the matter, is pending before the Assessing Officer.*
- 3) *From the copies of Balance Sheet at 31.03.2020, 31.03.2019, 31.03.2018, 31.03.2017 & 31.03.2016, it is found that the Company has taken a huge amount of Interest free inter corporate deposits from Prime Securities Limited which is Transferee Company in the proposed scheme.*

Amount in Lakhs

<i>31.03.2020</i>	<i>31.03.2019</i>	<i>31.03.2018</i>	<i>31.03.2017</i>	<i>31.03.2016</i>
<i>3964.71</i>	<i>4273.97</i>	<i>4543.37</i>	<i>5176.11</i>	<i>5721.20</i>

The Company has received huge amount as mentioned in above table as Interest Free Corporate deposits from Transferee Company consecutively for more than 5 years.

- 4) *The Company is having negative net worth of Rs. 2316.05 lakhs as at 31.03.2020 and Rs. 3000.95 as at 31.03.2019.*
- 5) *From the copies of Balance Sheet at 31.03.2020, 31.03.2019, 31.03.2018, 31.03.2017 and 31.03.2016, it is found that the Directors have not disclosed the DIN while signing the Balance Sheet as obligated vide provisions of Section 158 of Companies Act, 2013.*

12. In response to the above observations, the response submitted by the First Petitioner Company along with Official Liquidator's comments are as follows:

a. In relation to observation of the Official Liquidator, as stated in paragraph 5(I)(1)(a) of the report:

Management Response:

The management was of the opinion that based on the discussion with the lender, and the settlement arrived at with them, the said secured loan was no longer payable and management felt it appropriate to write-back the same in the books of accounts. There is no outstanding in the current date.

Official Liquidator's Comments

In view of management response and since company has written back the amount in terms of settlement arrived with lender. The Management response appears to be satisfactory.

b. In relation to observation of the Official Liquidator, as stated in paragraph 5(I)(1)(b):

Management Response:

The management was of the opinion that based on the discussion with the lender, and the settlement arrived at with them the said interest on the secured loan is no longer payable and hence no provision for the same was made in the books of accounts. There is no outstanding in the current date.

Official Liquidator's Comments

Since the amount has written back we agree with the explanation provided by the Management.

c. In relation to observation of the Official Liquidator, as stated in paragraph 5(I)(1)(c):

Management Response:

The management was of the opinion that based on the discussion with the lenders, and the settlement arrived at with them the said unsecured loans and current liabilities were no longer payable and also considering the limitation period, the management felt it appropriate to write-back the same in the books of accounts. There is no outstanding in the current date.

Official Liquidator's Comments

In view of management response and since company has written back the amount in terms of settlement arrived with lender. The Management response appears to be satisfactory.

- d. *In relation to observation of the Official Liquidator, as stated in paragraph 5(1)(2):*

Management Response:

The rectification is pending before the Assessing Officer and upon approval of the Scheme of Arrangement, the same will be continued in the name of the resultant entity.

Official Liquidator's Comments

The matter is related to Income Tax Department. However, Transferee Company / resultant entity should comply with the relevant provisions of the Income Tax Act, 1961

- e. *In relation to observation of the Official Liquidator, as stated in paragraph 5(1)(3):*

Management Response

The inter corporate deposit received is from the Parent Company and hence, no interest have been paid.

Official Liquidator's Comments

It appears that the Company is a 100% subsidiary of Prime Securities Limited (Transferee Company). It can take free inter corporate deposit from its Parent Company

- f. *In relation to observation of the Official Liquidator, as stated in paragraph 5(1)(4):*

Management Response

The First Transferor Company is 100% subsidiary of Prime Securities Limited (Transferee Company) and the accounts of the First Transferor Company are consolidated in the account of the Transferee Company at every year end and accordingly, there will be

no impact of the negative net worth on the Scheme of Arrangement.

Official Liquidator's Comments

The explanation appears to be satisfactory

g. In relation to observation of the Official Liquidator, as stated in paragraph 5(I)(5):

Management Response

The DIN of the Directors has been mentioned in the Annual Report, of which the Balance Sheet forms part of.

Official Liquidator's Comments

The default may be made good by filing of compounding application before the appropriate authority

13.Paragraph 5 (II) of the Official Liquidator's Report deals with the observation on the proposed Scheme to be considered by the Hon'ble NCLT for the Second Petitioner Company are stated as under:

1) *From the copies of Balance Sheet at 31.03.2020, 31.03.2019, 31.03.2018, 31.03.2017 & 31.03.2016, it is found that the Company has taken a huge amount of inter corporate deposits from Prime Securities Limited which is Transferee Company in the proposed scheme.*

Amount in Lakhs

<i>31.03.2020</i>	<i>31.03.2019</i>	<i>31.03.2018</i>	<i>31.03.2017</i>	<i>31.03.2016</i>
<i>497.81</i>	<i>267.87</i>	<i>248.49</i>	<i>115.55</i>	<i>34269</i>
	<i>243.96</i>			

The Company has received Corporate deposits from Transferee Company continuously for more than 5 years

2) *From the copies of Balance Sheet at 31.03.2020, 31.03.2019, 31.03.2018, 31.03.2017 and 31.03.2016, it is found that the Directors have not disclosed the DIN while signing the Balance Sheet as obligated vide provisions of Section 158 of the Companies Act, 2013.*

13. In response to the above observations, the response submitted by the First Petitioner Company along with Official Liquidator's comments are as follows:

a. *In relation to observation of the Official Liquidator, as stated in paragraph 5(II)(1):*

Management Response:

The inter corporate deposit received is from the Parent Company and the same has been almost repaid as on date.

Official Liquidator's Comments

It appears that the company is a 100% subsidiary of Prime Securities Limited (Transferee Company). It can take inter corporate deposit from its Parent Company

b. *In relation to observation of the Official Liquidator, as stated in paragraph 5(II)(2):*

Management Response:

The DIN of the Directors has been mentioned in the Annual Report, of which the Balance Sheet forms part of.

Official Liquidator's Comments

The default may be made good by filing of compounding application before the appropriate authority.

14. The Income Tax Department (Circle 8(2)(1), Mumbai) having jurisdiction over the First Petitioner Company has filed a letter dated February 4, 2021 with this Tribunal. In paragraph 4, 5 and 6 of the said report, the observation of the Income Tax Department (Circle 8(2)(1), Mumbai) on the proposed Scheme to be considered by the Hon'ble NCLT are stated as under:

4 (i) It is clear that all pending proceedings against the demerged Company shall be continued against the Resulting Company. Therefore, the Scheme should be without prejudice to the rights of the Income Tax Department and the Income Tax Department is free to proceed against the Resulting Company for all its proceedings.

4 (ii) At the moment this scheme is not being examined with reference to the taxation aspect vis-à-vis other such schemes if any. In future, if it is discovered that this scheme or similar such schemes are in any way

acting for tax-avoidance then department will be at liberty to initiate the appropriate course of action as per law

4 (iii) The Income tax department will be free to examine the aspect of any tax payable as a result of the Scheme and in case it is found that the scheme of arrangement ultimately results in tax avoidance or is not in accordance to the merger/demerger provisions of the Income Tax Act then the Department will be at liberty to initiate the appropriate course of action as per law.

4 (iv) It is further requested that the rights of the Income Tax department should remain intact to take out appropriate proceedings regarding raising of any tax demand against the demerger Company at any further date and these rights should not be adversely affected in view of the sanction of the scheme.

5. It is reiterated that any sanction to the Scheme of Arrangement under Section 230 to 232 of the Companies Act, 1956 should not adversely impact the rights of the Income Tax Department for any present or future proceedings. The Department should be at liberty to take appropriate action as per law in case of an event of any tax-avoidance or violation of Income Tax Law or any other similar issue

6. Further, it is to mention that demand of Rs 27,17,530/- for assessment year 2018-19 (Rs. 18,66,464/-) assessment year 2019-20 (Rs. 8,51,070) is outstanding against M/s. Primesec Investments Limited.

15. In response to the observations made by the Income Tax Department (Circle 8(2)(1), Mumbai), the Learned Counsel for Petitioner Companies has clarified as under:

- i) As far as observation of the Income Tax Department, as stated in paragraph 4 of the report is concerned, the Learned Counsel for the Petitioner Companies submits that as per Clause 2.3 of the Scheme, the pending proceedings of the Transferor Companies shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation and by anything contained in this scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced by or against the Transferee company in the same manner and to the

same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies as if this Scheme had not been made.

- ii) As far as observation of the Income Tax Department, as stated in paragraph 5 of the report is concerned, the Learned Counsel for the Petitioner Companies submits that the First Petitioner Company undertakes that sanction of the Scheme of arrangement would not adversely impact the rights of the Income Tax Department for any present or future proceedings.
- iii) As far as observation of the Income Tax Department, as stated in paragraph 6 of the report is concerned, the Learned Counsel for the Petitioner Companies submits that as per Clause 2.1.2(e) of the Scheme, any liabilities, including taxes, shall, pursuant to this Scheme becoming effective as per the order of the NCLT, without any further act or deed, be vested or deemed to be vested in and be assumed by the Transferee Company, so as to become as from the Appointed Date the debts, liabilities, contingent liabilities, Taxes, duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Companies. Therefore, any tax liability on the First Petitioner Company, will be vested / assumed by the Transferee Company upon the Scheme becoming effective.

16. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 1084 of 2020 are made absolute in terms of prayer clauses. Hence ordered.

ORDER

- i. The said Scheme of Arrangement is hereby sanctioned and declared the same to be binding on the (“Transferor Company 1”) and (“Transferor Company 2”) and (“Transferee Company”) AND their respective shareholders.
- ii. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-

Form INC-28, within 30 days from the date of receipt of the Order duly certified by the Deputy Director or Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.

- iii. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Director or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within a period of 60 working days from the date of receipt of the certified copy of the Order.
- iv. The Petitioner Companies shall comply with all the undertakings given by it.
- v. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Joint Registrar or the Assistant Registrar, of the National Company Law Tribunal, Mumbai Bench.
- vi. The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- vii. Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

Sd/-

**SHYAM BABU GAUTAM
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**

Certified True Copy

Date of Application: **14th May 2021**

Signed on this day of **19th May 2021**



Joint Registrar
NCLT Mumbai Bench
(Digitally Signed and scanned)