

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CA(CAA)/11/MB-IV/2021

*In the matter of
Section 230 & 232 of the companies act,
2013 read with rule 3 & 5 of the companies
(compromises, arrangements and
amalgamations) rules, 2016*

AND

In the matter of

GMR HIGHWAYS LIMITED

(CIN: U45203MH2006PLC287171)

...Transferee Company/
Applicant Company-1

**GMR TUNI-ANAKAPALLI
EXPRESSWAYS LIMITED**

(CIN: U45203MH2001PLC339776)

... Transferor Company-1/
Applicant Company-2

AND

**GMR TAMBARAM TINDIVANAM
EXPRESSWAYS LIMITED**

(CIN: U45203MH2001PLC339335)

... Transferor Company-2/
Applicant Company-3

Coram:

Smt. Suchitra Kanuparthi

: Hon'ble Member (J)

Shri Chandra Bhan Singh

: Hon'ble Member (T)

Order pronounced on 17th February 2021

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Appearances (via videoconferencing):

For the Applicants : Mr. Abhishek Bansal i/b Acumen
Juris, Law Office, Advocates.

O R D E R

Per: Suchitra Kanuparthi, Member (J)

1. The Bench is convened by videoconference today.
2. Learned Counsel for the Transferor Company and Transferee Company (collectively referred to as 'Applicant Companies') states that the present Scheme is a Scheme of Arrangement for Amalgamation ("Scheme") of GMR TUNI-ANAKAPALLI EXPRESSWAYS LIMITED ("Transferor Company/Applicant Company 2"), GMR TAMBARAM TINDIVANAM EXPRESSWAYS LIMITED ("Transferor Company-2/ Applicant Company-3") with and into GMR HIGHWAYS LIMITED ("Transferee Company/ Applicant Company-1") and their respective shareholders under sections 230 to 232 of the Companies Act, 2013 ("**Act**") read with rule 3 and 5 of Companies (Compromises, Arrangements And Amalgamations) Rules 2016 ("**Rules**") and rule 11 of The National Company Law Tribunal Rules, 2016. This Scheme provides for amalgamation of Transferor Company-1, Transferor Company-2 with and into the Transferee Company and the said Scheme is annexed as "**Exhibit 1**" to the Application.
3. The Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3 collectively referred to as the "**Transferor Companies**", wherever required.

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Rationale of the Scheme:

4. The Learned Counsel stated that the transfer and vesting of businesses of the Transferor Companies pursuant to this Scheme inter alia result in the following benefits amongst others:
 - i) This Scheme envisages vertical integration of companies engaged in similar business profile, thus, resulting in consolidation of businesses, simplification of structure (including shareholding structure) thereby strengthening position of the Transferee Company. It is intended that Transferee Company shall have sharper focus on underlying businesses with an aim of achieving operational efficiencies, stronger financials and growth prospects for the people and organization connected therewith. Accordingly, consolidation of businesses of the said companies would be in their best interests as well as their respective shareholders and other stakeholders. The proposed amalgamation envisaged under Part B of the Scheme is in line with the current global industry practice to achieve size, scalability, integration, greater financial strength, and flexibility thereby maximizing shareholder value and to achieve higher long-term financial returns.
 - ii) The other benefits likely to arise through the proposed arrangement are as follows:
 - a. enable the Transferee Company to consolidate its business operations and provide significant impetus to its growth;

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- b. result in reduction in overheads, administrative, managerial and other expenditures and will enhance operational efficiency and optimal utilization of various resources;
 - c. be conducive to better and more efficient and economical control and conduct of the business;
 - d. enable elimination of duplication of administrative functions and the multiple records keeping resulting in reduced expenditure;
 - e. result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and Transferee Company;
 - f. Obtaining synergy benefits.
5. There is no adverse effect of Scheme on the Directors, Key Management Personnel, shareholders, creditors and employees of Transferor Companies and Transferee Company. The Scheme would be in the best interest of all stakeholders.
6. Due to the aforesaid rationale, it is considered desirable and expedient to enter into this Scheme of Transferor Companies with the Transferee Company and in consideration thereof issue equity shares of the Transferee Company to the shareholders of Transferor Companies in accordance with this Scheme.

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Share Exchange Ratio

7. That the Share Exchange Ratio as per the Valuation Report issued by Mr. Siddharth Gupta, Registered Valuer dated November 19, 2020, which is annexed and marked as "*Exhibit 24*" to the Application is as follows:

- i) *8,814 (Eight Thousand Eight Hundred and Fourteen)* equity shares of INR 10 each fully paid up in the equity share capital of Transferee Company in respect of every 100 equity shares of INR 10 each fully paid up in the equity share capital of the Transferor Company-1/ Applicant Company-2, to the shareholders whose names appear in the register of members of the Transferor Company-1/ Applicant Company-2, and whose names appear as the respective beneficial owners of the equity shares of the Transferor Company-1/ Applicant Company-2 in the records of the depositories, as on the Record Date and in the manner as provided in the Scheme.

- (ii) *16,332 (Sixteen Thousand Three Hundred and Thirty Two)* equity shares of INR 10 each fully paid up in the equity share capital of Transferee Company in respect of every 100 equity shares of INR 10 each fully paid up in the equity share capital of the Transferor Company-2/ Applicant Company-3, to the shareholders whose names appear in the register of members of the Transferor Company-2/ Applicant Company-3, and whose names appear as the respective beneficial owners of the equity shares of the Transferor Company-2/ Applicant Company-3 in the records of the

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depositories, as on the Record Date and in the manner as provided in the Scheme.

8. The Applicant Companies have preferred instant joint application for the following relief sought for in the application namely:
9. For sanction of Scheme for the Application filed by the Applicant Companies before this Tribunal for being heard.
10. The Applicant Companies has represented that the joint application has been filed by the Applicant Companies which are amenable in view of rule 3 (sub-clause 2) of the Rules that registered offices of all the applicants are situated within the territorial jurisdiction of this Tribunal.

The Board of Directors of the Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3 and Transferee Company/ Applicant Company-1, vide separate meetings held on November 21, 2020, approved the proposed Scheme and copies of Resolution passed therein have been annexed to the application as "*Exhibit 3*", "*Exhibit 10*" and "*Exhibit 17*", respectively.

11. That the Transferor Companies are subsidiaries of the Transferee Company wherein the Transferee Company holds 73% shares in each of the Transferor Companies. That both the Transferor Companies and Transferee Company are part of the same group. That the Applicant Companies are 100% owned and controlled by flagship company, i.e.,

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GMR Infrastructure Limited. That the Appointed date in the Scheme is April 01, 2019.

12. That the Learned Counsel submitted that all the 7 (seven) shareholders of the Transferor Company-1/ Applicant Company-2 have given their written consent affidavit for adopting the Scheme without modification, which is annexed and marked as "*Exhibit 4*" to the Application, and therefore the calling of the meeting of the shareholders is dispensed with.
13. That the Learned Counsel submitted that all the 7 (seven) shareholders of the Transferor Company-2/ Applicant Company-3 have given their written consent affidavit for adopting the Scheme without modification, which is annexed and marked as "*Exhibit 11*" to the Application, and therefore the calling of the meeting of the shareholders is dispensed with.
14. That the Learned Counsel submitted that all the 7 (seven) shareholders of the Transferee Company/ Applicant Company-1 have given their written consent affidavit for adopting the Scheme without modification, which is annexed and marked as "*Exhibit 18*" to the Application, and therefore the calling of the meeting of the shareholders is dispensed with.
15. That it is stated that there is no preference shareholder in any of the Applicant Companies.

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16. That it is stated in the Application that there are NIL secured creditors and 11 unsecured creditors in the Transferor Company-1/ Applicant Company-2 and written consent affidavit for adopting the Scheme without modification from 06 out of 11 unsecured creditors **constituting 96.35% in value** has been received, which is annexed and marked as "*Exhibit 7 & 8 (colly)*" to the Application, and therefore calling of the meeting of the creditors of Transferor Company-1/ Applicant Company-2 is dispensed with.
17. That it is stated in the Application that there are NIL secured creditors and 09 unsecured creditors in the Transferor Company-2/ Applicant Company-3 and written consent affidavit for adopting the Scheme without modification from 06 out of 09 unsecured creditors **constituting 99.40% in value** has been received, which is annexed and marked as "*Exhibit 14 & 15 (colly)*" to the Application and therefore calling of the meeting of the creditors of Transferor Company-2/ Applicant Company-3 is dispensed with.
18. That in relation to the Transferee Company/ Applicant Company-1, it is stated in the application that there are 2 secured creditors amounting to INR 9,44,67,07,914/- and 104 unsecured creditors amounting to INR 3,93,33,42,075/- as on November 21, 2020. It is submitted that the net worth of the Transferee Company/ Applicant Company-1 and the Transferor Companies is positive and the amalgamation of the Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3 with and into the Transferee Company/

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Applicant Company-1 under the Scheme, will not adversely impact the rights of the creditors of the Transferee Company/ Applicant Company-1, since post Scheme, the assets of the Transferee Company/ Applicant Company-1 will be sufficient to discharge its liabilities. Further, there has been no compromise or arrangement of the Transferee Company with the creditors, and that all the creditors will be paid in due course. Further, the present case is similar to the facts in *CSA No. 243 of 2017 in the matter of Housing Development Finance Corporation Limited* and, therefore the Transferee Company/ Applicant Company-1 is not required to convene a meeting of its secured and unsecured creditors for approval of the Scheme. In view of this, the meeting of the secured and unsecured creditors of the Transferee Company/ Applicant Company-1 is not required to be convened. Accordingly, the no objection/ written consent or the consent affidavits of the secured creditors to be obtained and notice to all secured and unsecured creditors shall be sent, inviting representations, if any, thereto by post/ courier/ e-mail/ hand-delivery. Representations received, if any, within 30 (thirty) days shall be filed before this Tribunal from the date of receipt of such notice.

19. The Applicant Companies to serve the notice upon the Central Government through the office of the concerned Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, pursuant to section 230(5) of the Act and as per rule 8 of the Rules. If no response is received by the Tribunal from the Regional Director within thirty (30) days of the date of the date of receipt of the notice, it will be presumed

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that Regional Director has no objection to the proposed Scheme as per rule 8 of the Rules.

20. The Applicant Companies to serve the notice upon the concerned Register of Companies, Mumbai, pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Rules. If no response is received by the Tribunal from the Register of the Companies within thirty (30) days of the date of receipt of the notice, it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per rule 8 of the Rules.
21. The Applicant Companies to serve the notice upon the concerned Income Tax Authority, Pursuant to section 230(5) of the Companies Act, 2013 and as per rule 8 of the Rules. If no response is received by the Tribunal from the Income Tax authority within thirty (30) days of the date of receipt of the notice, it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per rule 8 of the Rules.

The following are the PAN details of the Applicant Companies:

| Name of the Applicant Company | PAN |
|--|------------|
| GMR Tuni-Anakapalli Expressways Limited (Transferor Company-1/ Applicant Company-2) | AABCG8474E |
| GMR Tambaram Tindivanam Expressways Limited (Transferor Company-2/ Applicant Company-3) | AABCG8475F |
| GMR Highways Limited (Transferee Company/ Applicant Company-1) | AADCG9020E |

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22. That the Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3 are directed to serve notice along with copy of Scheme upon the office of the Official Liquidator, High Court, Mumbai, pursuant to section 230(5) of the Act read with rule 8 of the Rules. Mr. S.P. Sakhala, Chartered Accountant, S.P. Sakhala & Company (email: casakhala@gmail.com) is appointed to assist the Official Liquidator to scrutinize the books of the Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3 for the last 5 years, at a remuneration of INR 30,000/- per financial year for both the Transferor Companies, which shall be paid by the Transferee Company. The Official Liquidator shall submit his report to the Tribunal within 30 (thirty) days of the date of receipt of such notice, failing which or in case no response is received by the Tribunal from the concerned office of Official Liquidator within the thirty (30) days of the date of the receipt, it shall be presumed that Official Liquidator has no objection to the proposed Scheme as per rule 8 of the Rules. A copy of the report shall simultaneously be served upon the Transferor Company-1/ Applicant Company-2 and Transferor Company-2/ Applicant Company-3.
23. The Applicant Companies are directed to file at this Tribunal an affidavit proving publication in the newspapers and sending notices along with other compliances of conditions as directed herein at least 3 (three) days before the date fixed for hearing of the Company Petition.

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24. Ordered accordingly.

**Sd/-
Chandra Bhan Singh
Member (Technical)**

**Sd/-
Suchitra Kanuparthi
Member (Judicial)**