

THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT- I)

COMPANY PETITION NO. (CAA)-41/CHD/HRY/2023
CONNECTED WITH
COMPANY APPLICATION NO. CA (CAA)-28/CHD/HRY/2023

IN THE MATTER OF COMPOSITE SCHEME OF ARRANGEMENT:

AMONGST

TALACE PRIVATE LIMITED

...Petitioner Company 1/Transferor Company 1

AND

TATA SIA AIRLINES LIMITED

...Petitioner Company 2/Transferor Company 2

AND

AIR INDIA LIMITED

...Petitioner Company 3/ Transferee Company

AND

THEIR RESPECTIVE SHAREHOLDERS

Order Delivered on: 06.06.2024

Sections: 230 to 232 of the Companies Act, 2013

CORAM

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Petitioners	:	Adv. Atul V. Sood with Adv. Bharat Apte
For the OL	:	Mr. Edward Augustine George
For the RD	:	Mr. Vineet Khatri, Company Prosecutor
For the IT Dept.	:	Mr. Yogesh Putney, Senior Standing Counsel

Judgment

PER : SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

This Company Petition is jointly preferred by the Petitioner Companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 for approval of the “Composite Scheme of Arrangement” (hereinafter referred to as “**Scheme**”) as contemplated amongst the Petitioner Companies and their respective shareholders. A copy of the Scheme has been placed on record. As per the Scheme, the “Appointed Date” shall be 29.11.2022 and the Effective Date shall be as defined in clause 1.1.11 of part 1 of the Scheme.

2. Particulars of the Petitioner Companies, as per record, are as follows:

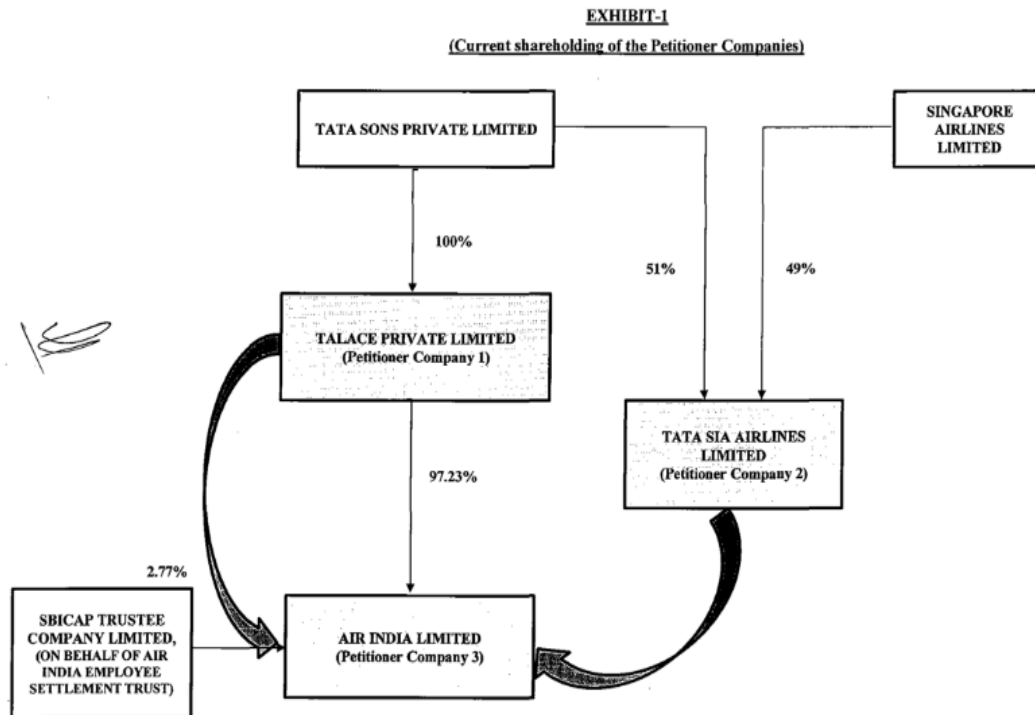
2.1 Talace Private Limited (hereinafter referred to as the “**Petitioner Company 1**” or the “**Transferor Company 1**”) having CIN U74999HR2020PTC 111111 is a company incorporated on 12.08.2020 under the provisions of the Companies Act, 2013. The registered office of the Petitioner Company 1 is situated at 2nd Floor, Block 4, Vatika One On One, Industrial Estate, Gurugram, Haryana - 122007. The Petitioner Company 1 is the holding company of the Petitioner Company 3 which holds, shareholding of: (i) 100% in Air India Express Limited; (ii) 100% in AIX Connect Private Limited (previously, AirAsia (India) Private Limited); and (iii) 50% in Air India SATS Airport Services Private Limited.

2.2 Tata SIA Airlines Limited (hereinafter referred to as the “**Petitioner Company 2**” or the “**Transferor Company 2**”) having CIN U62200HR2013PLC111543 is a company incorporated on 05.11.2013 under the provisions of the Companies Act, 1956. The Petitioner Company 2 has its registered office at Intellion Edge, Tower A, 9th & 10th Floor, South Peripheral Road, Sector – 72, Gurugram, Haryana - 122101. The Petitioner Company 2 is a full-service airline and a joint venture between Tata Sons Private Limited and Singapore Airlines Limited which operates under the brand of Vistara. The Petitioner Company 2 is engaged in the business of providing full service scheduled passenger airline services, cargo belly-hold services and certain other allied businesses.

2.3 Air India Limited (hereinafter referred to as the “**Petitioner Company 3**” or the “**Transferee Company**”) having CIN U62200HR2007PLC111539 is a company incorporated on 30.03.2007 under the provisions of the Companies Act, 1956. The Petitioner Company 3 has its registered office at Block 4, Vatika One On One, Sector 16, NH 48, Industrial Estate, Gurugram, Haryana - 122007. The Petitioner Company 3 is a subsidiary of the Petitioner Company 1. The Petitioner Company 3 and its subsidiaries are engaged in the business of providing full service and low cost scheduled passenger airline services, cargo belly-hold services and certain other allied businesses.

3. The Registered offices of all the Petitioner Companies are situated in in the State of Haryana and, therefore, the jurisdiction lies with this Tribunal.

4. As per the information provided by the Petitioner Companies in the Synopsis dated 05.04.2024, current Shareholding pattern of the Petitioner Companies involved in the Scheme is as follows:



5. It has been submitted that the Composite Scheme of Arrangement amongst the Petitioner Companies and their respective shareholders (“Scheme”) is filed under Sections 230-232 read with other applicable provisions of the Companies Act, 2013 and provides for the following:

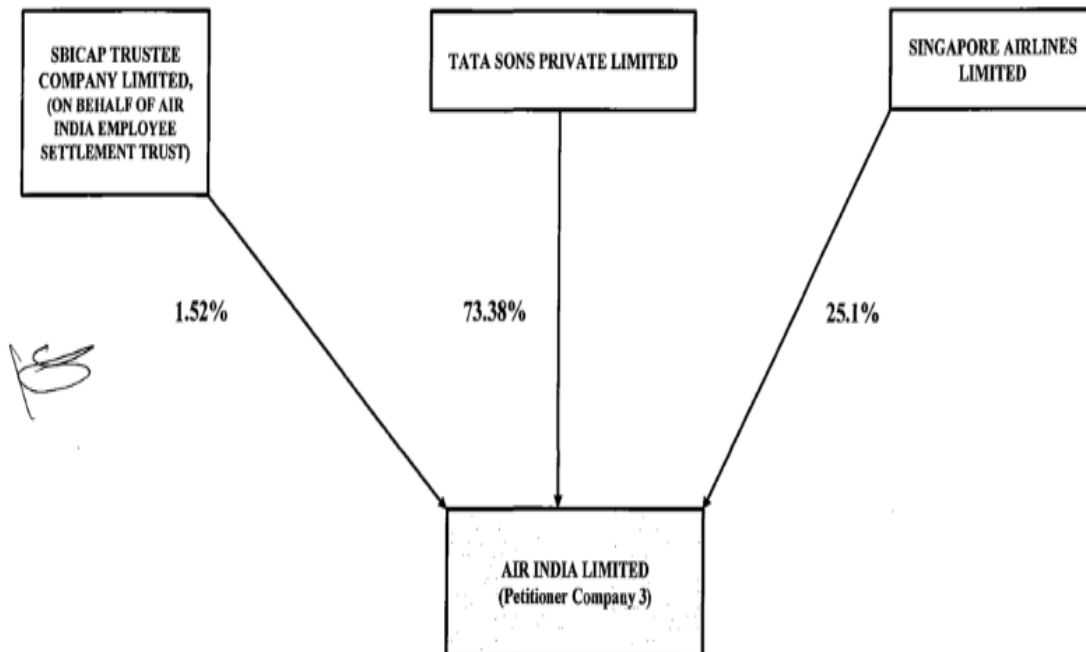
- a) Reorganization & reduction of share capital of the Petitioner Company 3;
- b) Amalgamation of the Petitioner Company 1 with the Petitioner Company 3 and the dissolution of the Petitioner Company 1 without winding up;

- c) Amalgamation of the Petitioner Company 2 with the Petitioner Company 3 and the dissolution of the Petitioner Company 2 without winding up;
- d) Preferential allotment of equity shares by the Petitioner Company 3 to Singapore Airlines Limited (a shareholder of the Petitioner Company 3).

6. Further, as per the information provided by the Petitioner Companies in the Synopsis dated 05.04.2024, post-merger, the Shareholding pattern of the Petitioner Company 3 shall be as reflected in the following chart:

EXHIBIT-2

(Post-merger shareholding of the Petitioner Company 3)



7. From the records, it is seen that the First Motion Application bearing No. CA (CAA) No. 28/Chd/Hry/2023 was filed by the Petitioner Companies for seeking directions for (a) convening the meeting of the Secured Creditors of the Petitioner Company 2; the meetings of the Unsecured Creditors of the Petitioner Company 2; and the Petitioner Company 3; and (b) for dispensing with the requirement of convening the meetings of the Equity Shareholders of all the 03 Petitioner Companies; and (c) the meetings of the Preference Shareholders of the Petitioner Company 1 and the Petitioner Company 3.

8. Accordingly, this Tribunal vide Order dated 21.07.2023 allowed convening of (a) meetings of the Secured Creditors & Unsecured Creditors of the Petitioner Company 2; (b) meetings of the Unsecured Creditors of Petitioner Company 3; (c) meetings of the Preference Shareholders of the Petitioner Company 1 and the Petitioner Company 3; and (d) dispensed with the requirement of convening the meetings of the Equity Shareholders of all the 03 Petitioner Companies.

9. Subsequently, the Second Motion petition was filed by the Petitioner Companies on 26.09.2023. In compliance of the aforesaid directions, the Reports of Chairperson were filed, as per which the Resolution approving the Scheme of Arrangement was approved and passed by 100% of the Secured Creditors of the Petitioner Company No. 2; 99.79% of Unsecured Creditors of the Petitioner Company No. 2 and by 99.99% of the Secured Creditors of Petitioner Company 3.

Further, the Petitioner Companies sought directions of this Tribunal in connection with the Scheme for issuance of notices to (i) Regional Director, Northern Region; (ii) Registrar of Companies, N.C.T. of Delhi & Haryana; (iii) Official Liquidator, attached to the High Court Punjab & Haryana; (iv) Income Tax Department through its nodal office and the Jurisdictional Assessment Office of each of the Petitioner Companies; (v) Competition Commission of India; (vi) Reserve Bank of India; (vii) Ministry of Civil Aviation; and (viii) Directorate General of Civil Aviation and to such other Objector(s), if any; and also for publication of the said Scheme in the newspapers. Accordingly, directions were issued vide Order dated 10.10.2023 of this Tribunal, requiring the Petitioner Companies to issue notices and carry out necessary publication with regard to the said Scheme in “Business Standard” (English, All India Edition) and “Business Standard” (Hindi, All India Edition) newspapers in not less than 10 days before the next date fixed for hearing.

10. In compliance with the above-stated directions, the Petitioner Companies have duly filed Affidavits of Service dated 04.12.2023 confirming that Notices of the present Petition were duly published in the “Business Standard” (English, All India Edition) on 10.11.2023 and “Business Standard” (Hindi, All India Edition) on 10.11.2023 and also, complete paper book was served to all the Statutory Authorities.

11. Accordingly, the RD filed its detailed report dated 29.11.2023 vide affidavit dated 05.12.2023, the relevant extracts of which reads thus:

7. That as per clause no. 9 and 10 of the Scheme, the share exchange ratio of the company:

- “6.2709 (Six point two seven zero nine) fully paid — up equity shares of Transferee Company of INR-4 (Indian Rupee Four) each for every (one) equity share of Transferor Company 01 of INR 10 (Indian rupee Ten) each and for every 1 (one) preference share of Transferor Company 01 of INR 10 (Indian rupees Ten) each.
2.5487 (two point five four eight seven) fully paid — up equity shares of Transferee Company of INR 4 (Indian Rupee four) each for every 1 (one) shares of Transferor Company 02 of INR 10 (Indian rupee ten) each.”



8. That the meeting of equity shareholders and unsecured creditors of Petitioner companies were dispensed with by Hon'ble NCLT, as duly recorded in Hon'ble

NCLT order 21.07.2023. There is no secured creditors in Transferor company no. 1 & 2.

9. That as per the report of Registrar of Companies, the Petitioner Companies have filed the Balance Sheet and Annual Return up to 31.03.2023. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Company.

10. That as per Clause 26 of the ROC Report dated 11.10.2023, following observation was raised:

- In the of Transferor Company no. 01, auditor has stated in the report for the FY,2022-23, that the company has made investment of Rs.2,68,300 Lacs in the JV, Associates and Subsidiary. Hence, the Company may be asked to ensure the compliance of the section 185 and 186 of the Companies Act, 2013.
- In the of Transferor Company no. 01, auditor has stated in the report for the F.Y.2022-23, that the Company has incurred operating cash losses of Rs. 5,417.22 Lacs in the Current year and of Rs. 1,667.35 Lacs in the Previous year.
- As per audited financial statements of the Transferor Company no.01 for the F.Y.2022-23, the income from revenue from its operation since last two years is nil. Hence, the company appears to be dormant u/s 455 of the Companies Act, 2013.
- As per audited financial statements of the Transferor Company no.01 for the F.Y.2022-23, it is seen that the company has outstanding dues of Rs. 7.33 Lacs with respect to MSME. However, the company has not filed the e-form MSME-1 with the RoC. Hence, the same may be clarify from the company.
- In the of Transferee Company, auditor has stated in the report for the F.Y.2022-23, that the company has given guarantee to its subsidiary of



(5)

Rs. 2440.78 million and given advances in the nature of loans of Rs. 9,769.01million. Hence, the Company may be asked to ensure the compliance of the section 185 and 186 of the Companies Act, 2013.

- In the of Transferee Company, auditor has stated in the report for the F.Y.2022-23, that the company has not paid the several statutory dues on account of dispute and cases for the same are being pending before their respective authority.
- It is seen from the clause no. 09 of the scheme that the preference shareholders of Transferor Company no.01 are getting equity shares of Transferee Company instead of preference share. Thus, the provision of section 230(7) (C) will be applicable. The company may be asked to clarify the compliance in this regard.
- In the Scheme, at clause no. 05, it is proposed that an additional allotment of Rs. 20,58,50,00,000/-(Indian Rupee Two Thousand Fifty Eight Crore and Fifty Lac) made by transferee company to SIA, which is an existing shareholders of Transferor Company no. 02 as part of the scheme. It is not clear as to how many shares would be issued and at which valuation.



The Transferee company may kindly be directed to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital.

That keeping in view of above observations, the Hon'ble Tribunal may satisfy itself w.r.t scheme and pass such order or orders as deemed fit and proper.


DEPONENT

VERIFICATION

I, Sanjay Shorey, Regional Director (NR), the Deponent above do solemnly verify and affirm that the contents of Affidavit in para 1 to 10

12. The Petitioner Companies in their Synopsis filed on 05.04.2024 have captured their Joint Reply filed in response to the Reports of RD/ROC which reads thus:

3.2. The responses to the observations have been captured in the joint reply filed in response to the reports of the RD and RoC. A summary of both the observations and responses is provided in the table below for reference:

S. No.	Observations (No-objections)	Responses (Diary No. 03160/7 dated 06.12.2023)
1.	<p><i>"In the of Transferor Company no. 01, auditor has stated in the report for the FY 2022-23, that the company has made investment of Rs. 2,68,300 Lacs in the JV, Associates and Subsidiary. Hence, the Company may be asked to ensure the compliance of the section 185 and 186 of the Companies Act, 2013."</i></p>	<ul style="list-style-type: none"> • In relation to Observation #1, it is submitted that the investment of Rs. 2,68,300 Lacs made by the Transferor Company 1 in its subsidiary during the financial year ending March 31, 2023 was made pursuant to shares allotted by way of rights issue under Section 62(1)(a) of the Companies Act. • Copies of the board resolution of the Transferor Company 1 approving the allotment of rights issue of shares and the eForm PAS-3 filed with ROC are annexed as ANNEXURE-3 (COLLY.) to the response. • It is submitted that since the above mentioned investment was made pursuant to a rights issue of shares under Section 62(1)(a) of the Companies Act, the provisions of Section 185 of the Companies Act are not applicable in the instant case on account of Section 185 dealing with provision of loans, advances and guarantees by a company to its directors and partner or relative of a director. • It is further submitted that the provisions of Section 186 of the Companies Act are also not attracted in the instant case since Section 186(1)(b)(iii) of the Companies Act categorically prescribes an exemption from the applicability of the provisions of Section 186 (except Section 186(1) which is complied with in the instant case) in case of any acquisition of shares allotted in pursuance of Section 62(1)(a) of the Companies Act. Further, Section 186(1) of the Companies Act is also complied with in the instant case as the Transferor Company 1 is holding the shares in the Transferee Company directly (i.e. there is not more than one layer). • An extract of the relevant provisions of Section 186 are set out

		<p>below:</p> <p><i>"186. Loan and investment by company.— (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of investment companies:</i></p> <p><i>Provided that the provisions of this sub-section shall not affect,—</i></p> <p>(i) <i>a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;</i></p> <p>(ii) <i>a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force."</i></p> <p><u><i>"(11) Nothing contained in this section, except sub-section (1), shall apply—</i></u></p> <p><u><i>...</i></u></p> <p><u><i>(b) to any acquisition—</i></u></p> <p>(i) <i>...</i></p> <p>(ii) <i>...</i></p> <p><u><i>(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62."</i></u></p> <ul style="list-style-type: none"> • Without prejudice to the above, it is submitted that the Transferor Company 1 shall comply with Sections 185 and/or 186 as may be applicable.
2.	<p><i>"In the of Transferor Company no. 01, auditor has stated in the report for the FY 2022-23, that the Company has incurred operating cash losses of Rs. 5,417.22 Lacs in the Current year and of Rs. 1,667.35 Lacs in the Previous year."</i></p>	<ul style="list-style-type: none"> • In relation to Observation #2, it is submitted that the Transferor Company 1 was incorporated on August 12, 2020 with one of the main objects of investment in transportation companies. The Ministry of Civil Aviation, Government of India issued a preliminary information memorandum dated January 27, 2020 inviting expressions of interest from interested bidders for the strategic disinvestment of the Transferee Company through the transfer of management control and sale of 100% of the equity share capital of the Transferee Company held by the Government of India. The Transferor Company 1 was selected as the successful bidder for the acquisition of the Transferee Company. On January 27, 2022, the Transferor Company 1 acquired 100% of the shares of the Transferee Company from the Government of India by way of a duly executed share purchase agreement. Consequently, the Transferee Company became a wholly owned subsidiary of the Transferor Company 1 on account of the consummation of the aforesaid transaction. As such, the Transferor Company 1 since its incorporation, has been incurring cash losses on account of administrative/operational expenses. Further, since the Transferor Company 1 is an investment holding company, it would realize income as and when it receives dividends from its investments.
3.	<p><i>"As per audited financials of the Transferor Company no. 01 for the FY 2022-23, the income from revenue from its operation since last two years is nil. Hence, the</i></p>	<ul style="list-style-type: none"> • In relation to Observation #3, the response is in terms of Observation #2 as stated above in Para 6.1 (<i>supra</i>) and the same is reiterated here. Further, the Transfer Company 1 continues to hold its investment in the Transferee Company and in this regard undertakes day to day activities relating to making investments as a holding company (including undertaking rights

	<i>company appears to be dormant w/s 455 of the Companies Act, 2013."</i>	issue of shares from time to time). Moreover, the Transferor Company 1 was actively involved in the acquisition process as highlighted in Para 6.1 above and it is therefore, not a dormant company. Further, pursuant to the Scheme, the Transferor Company 1 shall stand dissolved.
4.	<i>"As per audited financials of the Transferor Company no. 01 for the FY 2022-23, it is seen that the company has outstanding dues of Rs. 7.33 Lacs with respect to MSME. However, the company has not filed the e-form MSME-1 with the RoC. Hence, the same may be clarify from the company."</i>	<ul style="list-style-type: none"> In relation to Observation #4, it is submitted that the sum of Rs. 7.33 Lacs with respect to MSME that has been referred to by the RD is in the nature of a provision towards fees/expenses for statutory audit for FY 2022-23 and was not an outstanding due at the time. Further, since the invoice for provision of audit services had not been issued by the statutory auditor as on March 31, 2023, the said amount had not become due and payable beyond a period of 45 days so as to necessitate filing of eForm MSME-1 with the RoC. It is submitted that once the invoice amounting to Rs. 9,62,880 (inclusive of Goods and Service Tax) for providing audit services was issued on June 9, 2023, the same was paid by the Transferor Company on July 6, 2023 which is within 45 days from becoming due and therefore not necessitating filing of eForm MSME-1. Copies of the invoice dated June 9, 2023 and the document evidencing the payment are annexed as ANNEXURE-4 (COLLY.) to the response.
5.	<i>"In the of Transferee Company, auditor has stated in the report for the FY 2022-23, that the company has given guarantee to its subsidiary of Rs. 2440.78 million and given advances in the nature of loans of Rs. 9,769.01 million. Hence, the Company may be asked to ensure the compliance of the section 185 and 186 of the Companies Act, 2013."</i>	<ul style="list-style-type: none"> In relation to Observation #5, it is submitted that the guarantees that were given by the Transferee Company (<u>which was a Government company at the time</u>) to Air India Express Limited (previously known as Air India Charters Limited) ("AIXL") were exempt from the applicability of Section 185 of the Companies Act pursuant to the G.S.R. 463(E) Notification dated June 5, 2015 issued by the Ministry of Corporate Affairs ("MCA Notification"), a copy of which is annexed as ANNEXURE-5 to the response and also on account of AIXL being the wholly owned subsidiary of the Transferee Company. However, in terms of Section 179 of the Companies Act, the approval of the board of directors of the Transferee Company was taken for issuance of the corporate guarantees to AIXL. Copies of the said board resolutions of the Transferee Company dated May 11, 2014, May 11, 2015 and October 17, 2017 are annexed as ANNEXURE-6 (COLLY) to the response. It is further submitted that with respect to the advances mentioned in Observation #5, the said advances are in the nature of receivables by the Transferee Company from AIXL (i.e. the Transferee Company's wholly owned subsidiary) towards the expenditure incurred by the Transferee Company for the common services availed by AIXL. The said expenditure has been incurred by the Transferee Company under a master service agreement entered into between the Transferee Company and AIXL. Accordingly, Section 186 of the Companies Act is not applicable in the instant case. Without prejudice to the above, it is submitted that the Transferee Company shall comply with Sections 185 and/or 186 as may be applicable.
6.	<i>"In the of Transferee Company, auditor has stated in the report for the FY 2022-23, that the company has not paid the several statutory dues on account of dispute and cases for the</i>	<ul style="list-style-type: none"> In relation to Observation #6, it is submitted that the Transferee Company has been regular in paying its statutory dues and therefore, there are no outstanding statutory dues except which are pending on account of dispute or pendency before the respective authorities. It is undertaken that all such pending dues on account of dispute will be paid, if ruled against the Transferee Company, when the case is settled in the forum

	same are being pending before their respective authority."	<p>where the dispute is pending.</p> <ul style="list-style-type: none"> It is further submitted that since the company in question is the Transferee Company, i.e., the surviving company, the pendency of such statutory dues on account of dispute shall not be affected as a result of the mergers contemplated under the Scheme.
7.	"It is seen from the clause no. 09 of the scheme that the preference shareholders of Transferor Company no. 01 are getting equity shares of Transferee Company instead of preference share. Thus the provision of section 230(7)(C) will be applicable. The company may be asked to clarify the compliance in this regard."	<ul style="list-style-type: none"> In relation to Observation #7, it is submitted that the only equity and preference shareholder of the Transferor Company 1 (i.e. Tata Sons Private Limited) had given its consent for dispensing with the requirement of convening a meeting of the equity and preference shareholders of the Transferor Company 1 and in view of the same, this Hon'ble Tribunal by way of its order dated July 21, 2023 had dispensed with the requirement of convening a meeting of the equity and preference shareholders of the Transferor Company 1. Hence, the Scheme has been unanimously approved by the shareholders of the Transferor Company 1 whereas Section 48 contemplates approval by at least 75% of the shareholders. Accordingly, in view of the above, it is submitted that substantial compliance with the provisions of Section 230(7)(C) and Section 48 of the Companies Act has been undertaken since both equity and preference shareholders have unanimously approved the Scheme and there being no dissenting shareholders.
8.	"In the Scheme, at clause no. 05, it is proposed that an additional allotment of Rs. 20,58,50,00,000/- (Indian Rupee Two Thousand Fifty Eight Crore and Fifty Lac) made by transferee company to SIA, which is an existing shareholders of Transferor Company no. 02 as part of the scheme. It is not clear as to how many shares would be issued and at which valuation."	<ul style="list-style-type: none"> In relation to Observation #8, it is submitted that Clauses 24.1 and 24.2 of Part V of the Scheme dealing with preferential allotment of equity shares by the Transferee Company to Singapore Airlines Limited ("SIA") states as under and sets out the number of shares that would be issued and allotted and the valuation per share. <p><i>24.1 As an integral part of the Scheme and upon this Scheme becoming effective, simultaneously with the allotment of equity shares by the Transferee Company to the shareholders of the Transferor Companies pursuant to Part III and Part IV of the Scheme, the Transferee Company shall issue and allot to SIA on a preferential basis in accordance with Applicable Laws, 3,702,338,129 (Three Hundred Seventy Crores Twenty Three Lacs Thirty Eight Thousand One Hundred Twenty Nine Only) fully paid-up equity shares of face value of INR 4 each (Indian Rupees Four) ("Preferential Equity Shares") at a price of INR 5.56 (Indian Rupees five point five six) per equity share, subject to receipt of Subscription Amount in the Designated Bank Account, such that upon issuance and allotment of the SIA Merger Shares and the Preferential Equity Shares to SIA, SIA will hold an aggregate of 25.1% (Twenty Five Point One Percent) of the total issued and paid-up equity share capital of the Transferee Company.</i></p> <p><i>24.2 The price per share at which Preferential Equity Shares are proposed to be issued has been taken on record and approved by the Board of the Transferee Company after taking into consideration the (i) valuation report dated February 7, 2023 provided by PwC Business Consulting Services LLP, a registered valuer that has been prepared in accordance with the Act, and (ii) valuation report dated March 13, 2023 provided by RBSA Capital Advisors LLP (Category I SEBI registered Merchant Banker) that has been prepared in accordance with the pricing guidelines set out under the Indian Foreign Exchange Regulations."</i></p>

		<ul style="list-style-type: none"> • A copy of the report dated February 7, 2023 issued by PwC Business Consulting Services LLP, Registered Valuer on <i>inter alia</i>, the valuation of shares for the preferential allotment of equity shares by the Transferee Company to SIA in accordance with the Companies Act as well as a copy of the valuation report dated March 13, 2023 issued by RBSA Capital Advisers LLP, Category I Merchant Banker registered with SEBI on the valuation of shares for the preferential allotment of equity shares by the Transferee Company to SIA in accordance with the provisions of the Foreign Exchange Management Act, 1999 were annexed with the second motion petition as Annexure P-26 (Colly) and Annexure P-27.
9.	<p><i>"The Transferee Company may kindly be directed to comply with the provisions of Section 232(3)(f) of the Companies Act, 2013 regarding fee payable of its revised Authorized Share Capital."</i></p>	<ul style="list-style-type: none"> • In relation to Observation #9, it is submitted that the above observation provided in the RD Report pertains to Clause 26 of Part VI of the Scheme which deals with consolidation of authorized share capital of the Transferee Company and is extracted below: <p><i>"26.1 As an integral part of the Scheme and upon this Scheme becoming effective, and taking into account the capital reorganisation and reduction in Part II of the Scheme in the share capital of the Transferee Company, the authorized share capital of each of the Transferor Company 1 and Transferor Company 2 shall stand transferred to and be amalgamated/combined with the authorized share capital of the Transferee Company. Consequently, Clause VI of the memorandum of association of the Transferee Company shall, upon this Scheme becoming effective, pursuant to the provisions of Section 13 and other applicable provisions, if any of the Act and without any act, instrument or deed be and stand altered, modified and amended as follows:</i></p> <p><i>"VI. The Authorised Share Capital of the Company is Rs. 79000,00,00,000 (Indian Rupees Seventy Nine Thousand Crore Only) divided into 13287,50,00,000 (Thirteen Thousand Two Hundred Eighty Seven Crore and Fifty Lakhs Equity Shares of Rs. 4 (Indian Rupees Four) each and 2585,00,00,000 (Two Thousand Five Hundred and Eighty Five crore Preference Shares of Rs. 10 (Indian Rupees Ten) each."</i></p> <p><i>For the avoidance of doubt, it is clarified that, in case the authorised share capital of the Transferee Company, Transferor Company 1 and Transferor Company 2 undergoes any change, either as a consequence of any corporate actions or otherwise, then Clause VI of the Memorandum of Association of the Transferee Company shall automatically stand modified / adjusted automatically accordingly to take into account the effect of such change.</i></p> <p><i>26.2 <u>The fees or stamp duty, if any, paid by each of the Transferor Company 1 and Transferor Company 2 on their respective authorized share capital shall be deemed to have been so paid by the Transferee Company on the combined authorized share capital, and the Transferee Company shall not be required to pay any fee/ stamp duty for the increase of the authorized share capital in compliance with Section 232(3)(f) of the Act.</u> The authorised share capital of the Transferee Company will automatically stand increased to that effect by simply filing the requisite forms with the RoC and no separate procedure or instrument or deed shall be required to</i></p>

		<p><i>be followed under the Act.</i></p> <p><i>26.3 The approval of this Scheme by shareholders of the Transferee Company under sections 230 to 232 of the Act, whether at a meeting or otherwise, or any dispensation of the same by the Tribunal, shall be deemed to have been an approval under section 13, section 61 and 64 or any other applicable provisions under the Act and no further resolution(s) would be required to be separately passed in this regard."</i></p> <ul style="list-style-type: none"> • Section 232(3)(i) of the Companies Act states as under: <p><i>"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"</i></p> • Section 233(11) of the Companies Act states as under: <p><i>"The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:</i></p> <p><i>Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation."</i></p> • In this regard it is submitted that Clause 26 of Part VI of the Scheme is in consonance and compliance with the relevant law, in particular, Section 232(3)(i) read with Section 233 (11) of the Act. In other words, Sections 232(3)(i) read with Section 233 (11) of the Companies Act provide that the fees paid by a transferor company on its authorized share capital prior to an amalgamation can be set off against the fees payable by the transferee company on its authorized share capital enhanced by the amalgamation. Accordingly, the said Clause 26 of Part VI of the Scheme simply reiterates the statutory prescription that the Transferee Company shall be entitled to a merger of the authorized share capital of the Transferor Companies, along with a credit of statutory fees paid to the RoC by the Transferor Companies in such regard. • In relation to the above, it is hereby further submitted that, without prejudice and if applicable, the Transferee Company hereby undertakes to pay the requisite fees on its authorized share capital enhanced by the amalgamations after having made the applicable adjustments, as permitted in terms of Section 232(3)(i) read with Section 233 (11) of the Companies Act.
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Thus, we find that the Petitioner Companies have clarified their position in response to the observations made by RD/ROC. During the course of hearing held on 23.04.2024, Ld. Company Prosecutor appearing for RD submitted that all their observations stands satisfied. Hence, it is presumed that there is no objection of RD/ROC to the Scheme under consideration.

13. In response to the notice, the Official Liquidator (OL) also filed its Report dated 30.11.2023 on 01.12.2023 and did not raise any objection toward the approval of the Scheme. The relevant excerpts of the OL's Report reads as under:

10. That on the basis of the facts in the joint petition, additional information/documents provided by the company, rationale of the scheme it is hereby submitted that the office of the official liquidator does not have any specific observations/objections.

PRAYER:

In view of the submissions made in preceeding paras of this report and the observations of the Independent Auditor mentioned as per the audit reports, the Office of the Official Liquidator most respectfully prays that the matter may kindly be decided on merits of the case by this Hon'ble Tribunal.

Further, during the course of hearing held on 05.04.2023, the Ld. Counsel appearing for OL reiterated that did not have any objection to the Scheme.

14. In response to the notice, the Income Tax Department too filed its Reports in respect of the Petitioner Companies. The Report dated 14.11.2023 filed on 07.12.2023 in respect of the Petitioner Company 1 reads thus:

Kindly refer to the above.

2. It is submitted that M/s Talace Private Limited (PAN-AACIT0139L) lies in this jurisdiction viz. DCIT- 1(3)(1), Mumbai. On verification of records from system, the following observations are made:

- (i) There is no pending assessment/ penalty proceedings in the said case. (screenshot enclosed)
- (ii) There is no demand outstanding in the said case. (screenshot enclosed)

Submitted for perusal and submissions before the Hon'ble NCLT.



The Income Tax Department's Report dated 14.11.2023 filed on 07.12.2023 in respect of the Petitioner Company 2 reads thus:

S. N	Important components of the Proposal	Observation of the AO
1.	Name of the Company in relation to which this report is submitted	M/s Tata SIA Airlines Ltd. (AAECT8346F)
2.	Details of proposal	Number of companies involved in scheme of Amalgamation:- 1. M/s Talace Pvt. Ltd. (Transferor Company-1) 2. M/s Tata SIA Airlines Ltd. (Transferor Company-2) 3. M/s Air India Ltd. (Transferee Company)
3.	Details of any proceedings pending against applicant companies under the Income Tax Act.	None
4.	Details of tax demand pending for recovery from the applicant company	NIL
5.	Date of present report	06-10-2023
6.	Remarks about objection to the scheme or any representation to NCLT to protect the Interest of Revenue.	This office has no objection in the proposed scheme of amalgamation w.r.t 1. M/s Talace Pvt. Ltd. (Transferor Company-1) 2. M/s Tata SIA Airlines Ltd. (Transferor Company-2) 3. M/s Air India Ltd. (Transferee Company)

The Income Tax Department's Report dated 08.12.2023 filed on 12.12.2023 in respect of the Petitioner 3 / Transferee Company reads thus:

2. Air India Ltd. in pursuance of the Hon'ble Mumbai Bench of National Company Law Tribunal order, has served a copy of notice to the Office of DCIT 5(1)(1), Mumbai, Income Tax Department, pursuant to section 230(5) of the Companies Act, 2013 in connection with the proposed composite scheme of arrangement (Scheme of Amalgamation) amongst M/s. Talace Private Limited (Transferor Company No. 1/ Petitioner Company No. 1), M/s. Tata SIA Airlines Limited (Transferor Company No. 2/ Petitioner Company No. 2) with M/s. Air India Limited (Transferee Company/ Petitioner Company No. 3) and their respective creditors and shareholders vide COMPANY PETITION CP(CAA) NO. 41/CHD/HRY/2023 CONNECTED WITH COMPANY APPLICATION CA(CAA) NO. 28/CHD/HRY/2023 for filing representation in respect of the proposed

scheme. The DCIT 5(1)(1), Mumbai charge is having jurisdiction over the case of Air India Ltd.

3. The Income Tax Act has defined amalgamation in Section 2(1B) of the IT Act, 1961. The provisions of the Act dealing with the aforesaid arrangements, including provisions for not treating the said transaction as transfer, set off and carry forward of accumulated losses and carry forward of other tax benefits granted to participating companies, have wide implications, which are to be examined in light of the facts of the case and after consolidation of accounts and subsequent filing of income tax return on the basis of consolidated accounts. The share exchange ratio vis-à-vis valuation report, accounting treatments for surplus/deficit (if any) and income tax incidence on the same needs further verification on the basis of consolidated accounts. Therefore, the effect of aforementioned scheme of arrangement in the books of account and consequential tax implication is to be ascertained at later stage.

4. In view of the above it is submitted that the right of the Income Tax Department to ascertain/assess correct income in correct hands as per provisions of the Act, especially for the period involving appointed date and effective date may kindly be kept reserved. Also, the right of the department to recover outstanding demand or complete pending income tax proceedings or initiate necessary proceedings as per relevant provisions of the Act may also be kept reserved. The above comments may kindly be filed before Hon'ble Tribunal for kind consideration.

15. The Petitioner Companies in their Synopsis filed on 05.04.2024 have captured their Joint Reply filed in response to the Reports of Income Tax Department, which reads thus:

Observations (no-objections)	Responses (Affidavit Diary No. 03160/10 dated 19.02.2024)
<p><i>The Income Tax Act has defined amalgamation in Section 2(1B) of the IT Act, 1961. The provisions of the Act dealing with the aforesaid arrangements, including provisions for not treating the said transaction as transfer, set off and carry forward of accumulated losses and carry forward of other tax benefits granted to participating companies, have wide implications, which are to be examined in light of the facts of the case and after consolidation of accounts and subsequent filing of income tax return on the basis of consolidated accounts. The share exchange ratio vis-à-vis valuation report, accounting treatments for surplus/deficit (if any) and income tax incidence on the same needs further verification on the basis of consolidated accounts. Therefore, the effect of aforementioned scheme of arrangement in the books of account and consequential tax implication is to be ascertained at later stage.</i></p> <p><i>4. In view of the above it is submitted that the right of the Income Tax Department to ascertain/assess correct income in correct hands as per provisions of the Act, especially for the period involving appointed date and effective date may kindly be kept reserved. Also, the right of the department to recover outstanding demand or complete pending income tax proceedings or initiate necessary proceedings as per relevant provisions of the Act may also be kept reserved. The above comments may kindly be filed before Hon'ble Tribunal for kind consideration."</i></p>	<ul style="list-style-type: none"> • That in response to the observations contained in the IT Report, it is submitted that the sanction of the Scheme by this Hon'ble Tribunal shall not prejudice the rights of the IT Department to verify and ascertain at a later stage, the effect of the arrangements contemplated in the composite scheme of arrangement in the books of accounts and consequential tax implications. • That in relation to the above, the Transferee Company hereby undertakes that it recognizes and appreciates the reservation of the right of the IT Department to ascertain/ assess correct income in correct hands as per provisions of the Income-tax Act, 1961 ("IT Act"), especially for the period involving appointed date and effective date as well as the right of the IT Department to recover any outstanding demand or complete pending income tax proceedings or initiate necessary proceedings as per relevant provisions of the IT Act from/ against the Transferee Company, in accordance with the provisions of applicable law. Therefore, the observations contained in the IT Report are not an impediment to the sanction of the Scheme.

16. Since there is clear no objection of Income Tax Department against the Petitioner Company No. 1 and 2 (as there is neither any demand outstanding nor any assessment/penalty proceeding pending against them) and the Petitioner Companies have given an undertaking (ibid) in response to the observations of the Income Tax Department in respect of Petitioner 3/ Transferee Company, it is presumed that the Income Tax Department has no objection to the Scheme. Further, during the course of hearing on 05.04.2024, the Ld. Sr. Standing Counsel appearing for the Income Tax Department unequivocally stated that the Department has no objections to the Scheme.

17. It is submitted by the Petitioner Companies that Competition Commission of India (CCI) has approved the Scheme. They have placed on record the copies of the letter dated 01.09.2023 (Annexure P-28; Page 546) along with the detailed order dated 15.09.2023 (Page 547).

The CCI has also directly filed their Report vide Diary No. 370 dated 19.09.2023 and Diary No. 460 dated 03.11.2023 enclosing therewith letter dated 11.09.2023 and 27.10.2023 respectively conveying their approval to the Scheme under the provisions of the Competition Act, 2002.

A copy of one such communication dated 11.09.2023 is reproduced overleaf:



alloweation 21-08-2023
राष्ट्रीय प्रतिस्पर्धा आयोग
N.C.L.T., Chandigarh
सी.ए.ए./डी.नं. 370
दिनांक/दिनांक 19/9/23



भारतीय प्रतिस्पर्धा आयोग
COMPETITION COMMISSION OF INDIA

N-20(19)/F-57/(03)/2023/CD/4623

11th September 2023

सेवा में,
रजिस्ट्रार
राष्ट्रीय कंपनी विधि अधिकरण
चंडीगढ़ बैंक, भूतल, कारपोरेट भवन,
सेक्टर-27-B, मध्य मार्ग, चंडीगढ़-160019

Subject: Notice given under Section 230(5) of the Companies Act, 2013 by NCLT
(Chandigarh Bench)

महोदय,

This has reference to the captioned subject, seeking representation of the Competition Commission of India ("Commission"), if any, on the following matter(s): -

SN	Name of the parties	Date of receipt	CA No.	CP No.
1.	Talace Private Limited and Tata SIA Airlines Limited and Air India Limited	22.08.2023	28/CHD/HRY/2023 & 119/2023	-

2. As you are aware, the Competition Commission of India ("Commission") has been established to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matter connected therewith or incidental thereto.

3. In this regard, it is informed that the matter referred to therein has been approved by the Commission on 1st September 2023 under the provisions of the Competition Act, 2002.

4. Summary of the Commission is available at <https://www.cci.gov.in/combination/order/details/summary/1272/0/orders-section31>

Bidyaadhar Majhi
(बिद्याधर माझी)
सलाहकार (अर्थशास्त्र)

Ms. Prabhat

19.09.23

Page 1 of 1

9th Floor, Office Block-1, Kidwai Nagar (East), New Delhi-110023, INDIA
Phone : +91-11-24664100, Fax : +91-11-20815022, Web. : www.cci.gov.in

18. The Petitioner Companies have also submitted that the Ministry of Civil Aviation (MOCA) by way of its no-objection certificate dated 22.02.2024 (AV-13012/1/2021-DT) [containing the letter dated 20.02.2024 (AV.14015/03/1997-AT-1) issued by the DGCA] to the Petitioner Company 3 with a copy to the Petitioner Company 2, conveyed its approval to the Scheme. By way of the said NOC, the MOCA, being the competent authority, has conveyed their approval to the Scheme subject to the foreign direct investment approval by Singapore Airlines (a shareholder of the Petitioner Company 2) and security clearances as required under relevant Civil Aviation Regulations (CARs) issued by DGCA. The MOCA also granted a time frame of 09 months from the date of the written order of this Tribunal approving the Scheme to enable the Company to complete the process of merger and associated formalities thereof.

19. The Petitioner Companies have, accordingly, undertaken that they shall take necessary steps to obtain approvals/security clearances as required under relevant CARs issued by DGCA and comply with the applicable Civil Aviation Regulations and also obtain approvals under the FDI policy in this regard from MOCA/DGCA/any other authority.

The said letter of Ministry of Civil Aviation (MOCA) dated 22.02.2024 containing therewith the letter dated 20.02.2024 (AV.14015/03/ 1997-AT-1) issued by the DGCA has been placed on record by the Petitioner Companies by way of C.A. No. 75 of 2024, which is reproduced overleaf, for immediate reference:

ANNEXURE - 1

AV-13012/1/2021-DT
Government of India
Ministry of Civil Aviation

B Block, Rajiv Gandhi Bhawan,
 New Delhi, Dated 22 February, 2024

To
 M/s Air India Limited,
 Block 4, Vatika One on One,
 Sector 16, NH 48, Industrial Estate,
 Gurugram, Haryana - 122007
 [Kind Attn : Shri P. Balaji, Group Head, Compliance & Corporate Affairs].

Subject: Composite scheme of arrangement filed before the National Company Law Tribunal (NCLT) Chandigarh amongst Talace Private Limited, Tata SIA Airlines Limited (Vistara) and Air India Limited (Air India) and their respective shareholders - reg.

Sir,

I am directed to refer to your letter ref. no. AIHQ/GRC/Merger/2023 dated 16.02.2024 regarding the above mentioned subject and to convey the approval of the Competent Authority for grant of NOC for Composite Scheme of arrangement amongst Talace Private Limited, Tata SIA Airlines Limited and Air India Limited and their respective shareholders' shareholding pattern in accordance with DGCA's letter No. AV-14015/03/1997-AT-1 dated 20.02.2024 (copy enclosed), subject to approval of FDI by Singapore Airlines Limited in this regard and security clearances as required under relevant CAR issued by DGCA.

2. Further, approval is also granted for the time frame of 09 months from the written Order approving the Scheme by the NCLT to enable the Company to complete the process of merger and associated formalities thereof.
3. This issues with the approval of the Competent Authority.

Signed by Yours faithfully,

Kameshwar Mishra

Date: 22.02.2024 (Kameshwar Mishra)

Under Secretary to the Govt. of India
 Tele: 24648983

Encl. As above

Copy to:-


- (i) M/s Tata SIA Airlines Limited; Intellion Edge, Tower A, 9th and 10th Floor, South Peripheral Road, Sector - 72, Gurugram, Haryana - 122101.



15

GOVERNMENT OF INDIA
OFFICE OF THE
DIRECTOR GENERAL OF CIVIL AVIATION
OPP. SAFDARJUNG AIRPORT
NEW DELHI - 110 003, INDIA
दूरभाष / फ़ोन : +९१-११-२४६२८९२२
Telefax : +91-11-24628922



भारत सरकार
वायव्य विमानन महानिदेशक का कार्यालय
संघटन विमानपत्तन के मामले
नई दिल्ली - ११० ००३, भारत

शुभ चरण संचालन को अग्र

संख्या/Ref. : AV.14015/03/1997-AT-1
दिनांक / Dated: 20.02.2024

To,

The Ministry of Civil Aviation
Rajiv Gandhi Bhawan,
Safdarjung Airport
New Delhi - 110003

[Kind Attn.: Sh. Kameshwar Mishra, Under Secretary]

Subject: Composite scheme of arrangement has been filed before the National Company Law Tribunal (NCLT) Chandigarh amongst Talace Private Limited, Tata SIA Airlines Limited (Vistara) and Air India Limited (Air India) and their respective shareholders.)

Sir,

I am directed to refer to the Ministry's email dated 19.02.2024 forwarding therewith a letter dated 16.02.2024 from Air India seeking comments/inputs from DGCA and Ministry's letter No. AV-29017/19/2020-DT dated 20.11.2023 regarding the proposal from Singapore Airline seeking Ministry's approval for FDI in Air India Ltd as part of the proposed scheme of amalgamation, and to furnish the following comments/inputs in the matter for consideration of MoCA:-

- i. Besides the requisite statutory approvals from NCLT, CCI and any other such relevant authorities for the proposed scheme of amalgamation, Air India shall require a permission from MoCA as per the provisions of Para 14.4 of the CAR Section 3 Series C Part II, and FDI approval or the preferential allotment of additional equity shares to Singapore Airlines Ltd in the merged entity. Ministry may suitably consider grant of these permissions as per the applicable procedure and compliance of requirements prescribed under the FDI Policy issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry and FDI Guidelines contained in AIC 12/2103.
- ii. On the day when the proposed scheme of amalgamation comes into effect (Effective Date), TATA SIA Airlines Ltd (Vistara) shall cease to exist as a legal entity. Therefore all the regulatory approvals/aircraft registration as well as the AOC issued to the company shall become invalid. Therefore, pursuant to the NCLT

Page 1 of 2




approved scheme of amalgamation, the airlines would be required to move their aircraft, personnel, operations etc. from TATA SIA Airlines Ltd (Vistara) to Air India Ltd, on or before the effective date. Since, the Airline companies are regulated entities, they need approvals from DGCA for the transfer.

- iii. Further, they would have to transfer international slots, bilateral traffic rights and contracts relating to codeshares and interline arrangements with foreign airlines and any other such commercial contracts pertaining to Vistara in the name of Air India.
- iv. In order to effect transfer/integration of their aircraft and operations, the airline would be required to formulate a transition plan which would inter alia include Safety risk assessment and change management plan including a system of continuous monitoring, changes in the AOC organisation and post holders, changes/update proposed in regulatory manuals/documents, integration of operational control systems, safety management systems, maintenance arrangements, training plans for pilots/ cabin crew/ engineers and other personnel, aircraft Specific approvals/documents for each aircraft.
- v. In this regard meetings were also held for discussions with Air India and Vistara on 06.02.2023 and 13.02.2024 on the modalities to be followed for safe and orderly integration of the two airline post approval from NCLT. Considering the size and complexity of the Integration exercise the airlines were advised to consider sufficient transition time and suitable effective date in their scheme of amalgamation to be approved by NCLT.
- vi. Based on the discussions with the airlines and the submissions made by Air India vide letter dated 16.02.2024, a time frame of 09 months from the written Order approving the Scheme by the NCLT seems to be reasonable and realistic for achieving the merger/integration keeping the complexities and safety aspects into consideration. However, this projected timeframe is contingent upon the Airlines adhering to their timelines regarding submission of manuals and other compliance obligations which are to be initiated by them in a defined timeframe.
- vii. DGCA will engage with the airlines and facilitate required regulatory approvals for the safe and orderly transfer of aircraft and integration between the two airlines.

This issues with approval of Competent Authority.

Yours faithfully,


20/2/2024
(Atul Maindola)

Director of Operations - Air Transport
for Director General of Civil Aviation

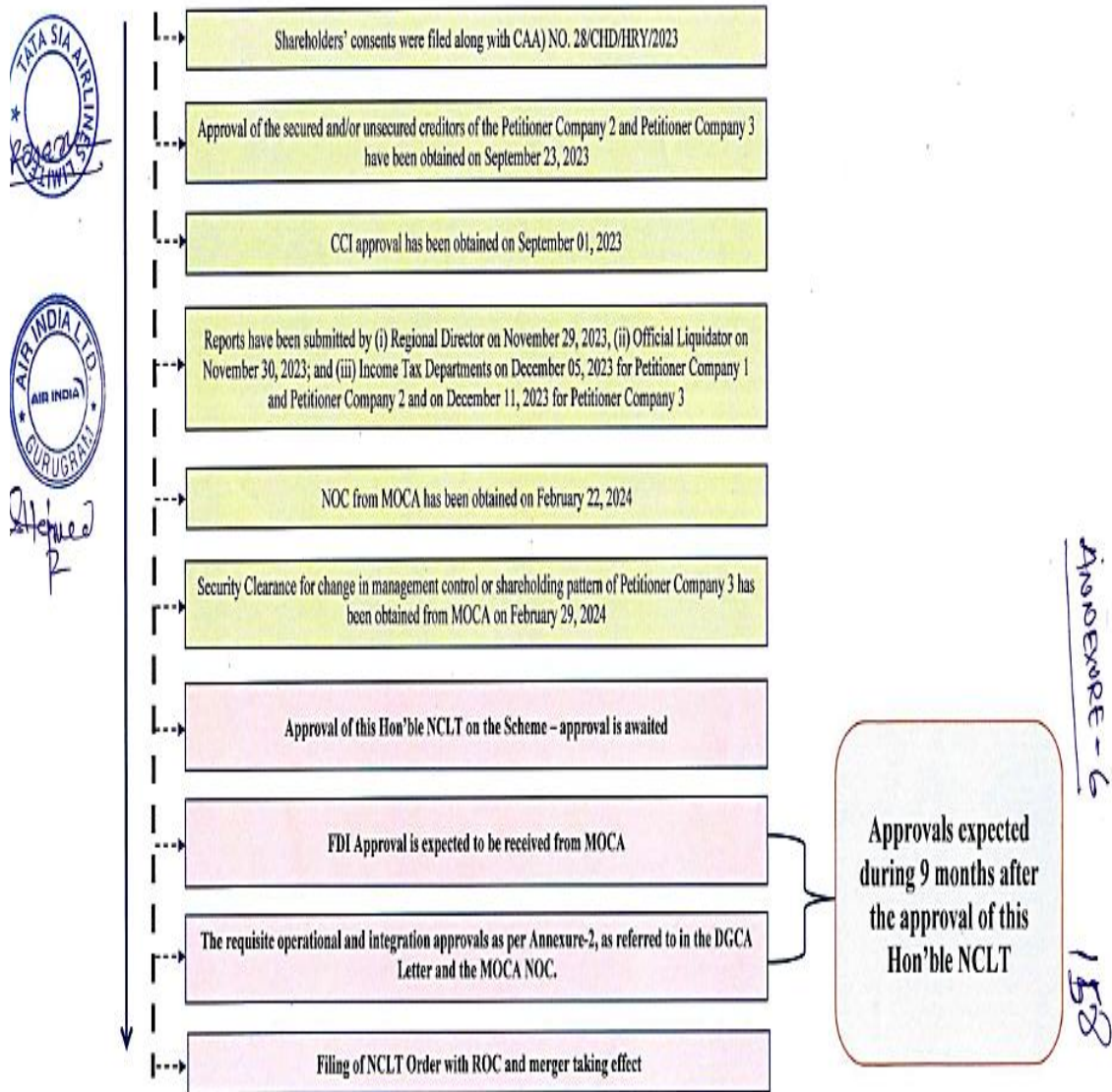
Page 2 of 2



20. Pursuant to directions of this Tribunal dated 5.4.2024, the Petitioner Companies, vide diary No. 03160/2 dated 15.04.2024, have also placed a Flow Chart depicting various compliances required by the Regulators. The Flow Chart summarising the stages of various approvals obtained/required to be obtained by the Petitioner Companies is reproduced thus:

ANNEXURE-6

FLOW CHART DEPICTING THE STAGES AT WHICH THE VARIOUS APPROVALS HAVE ALREADY BEEN OBTAINED AND CERTAIN APPROVALS THAT WILL BE OBTAINED ONCE THIS HON'BLE TRIBUNAL HAS APPROVED THE SCHEME



21. In view of the foregoing facts, discussions and considering the approval accorded by the shareholders and creditors of all the Petitioner Companies to the proposed Scheme and no sustainable objections having been raised by the, Regional Director (North), Official Liquidator, Income Tax Department or any other interested party and all the necessary and applicable approvals including those of CCI and the Sectoral Regulator i.e. DGCA/MOCA, which are required for sanction of the Scheme, have already been obtained and are on record with this Tribunal, there appears to be no impediment in granting sanction to the Scheme. **Accordingly, sanction is hereby granted to the “Composite Scheme of Arrangement” amongst the Petitioner Companies and their respective shareholders under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.** The sanctioned Scheme shall be binding on the Petitioner Companies and their respective shareholders. The Petitioner Companies shall remain bound to comply with the statutory requirements in accordance with law.

22. Notwithstanding the above, if there is any deficiency found or violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Authority to the Scheme will not come in the way of action to be taken, albeit, in accordance with law, against the concerned persons, Directors, and Officials of the Petitioner Companies.

23. While approving the Scheme as above, it is clarified that this Order should not be construed as an order in any way granting exemption to Petitioner Companies from payment of Stamp Duty, Taxes, or other statutory dues if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement, which may be specifically required under any law. Further, approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act 1961 or serve as any exemption or defence for the Petitioner Companies against tax treatment in accordance with the provisions of the Income Tax Act, 1961.

24. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Companies and Transferee Company, that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 29.11.2022, the Transferor Companies shall stand dissolved without undergoing the process of winding up on completion of merger and associated formalities after receipt of necessary approvals including FDI approval/security clearances as required under relevant CARs issued by DGCA/MCA/any other Authority within a period of 09 months from the date of this order;
- (ii) All benefits, entitlements, incentives, and concessions under incentive schemes and policies that the Transferor Companies are entitled to including under Customs, Excise, Service Tax, VAT, Sales Tax, GST and Entry Tax and Income Tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/ deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee

Company was originally entitled to all such benefits, entitlements, incentives and concessions;

- (iii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Effective Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favorable than those on which they are engaged by the Transferor Companies, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;
- (v) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company as if it had incurred such liabilities;
- (vi) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company;

- (vii) As observed by RD in its report, the Transferee Company shall comply with the provisions of Section 232 (3)(i) of the Companies Act 2013 in regard to fee payable on its revised authorized share capital.
- (viii) As already undertaken by the Transferee Company vide its Affidavit dated 15.02.2024 (ibid), the Transferee Company recognizes the reservation of the right of the Income Tax Department to ascertain/asses correct income in correct hands as per provisions of the Income-tax Act, 1961 especially for the period involving appointed date and effective date as well as the right of the Income Tax Department to recover any outstanding demand or complete pending income tax proceedings or initiate necessary proceedings as per relevant provisions of the Income Tax Act from/against the Transferee Company, in accordance with the provisions of applicable law.
- (ix) The Income Tax Department shall be at liberty to undertake action as deemed fit under the provisions of the Income Tax Act, 1961 as observed by them while conveying approval in respect of the Petitioner Company 3 and the Petitioner 3/Transferee Company shall abide by their undertaking as recorded in Para 15 of this order.
- (x) The Petitioner Companies shall ensure Foreign Direct Investment (FDI) approval by Singapore Airlines (a shareholder of the Petitioner Company 2) and security clearances as required under relevant Civil Aviation Regulations (CARs) from DGCA/MOCA within a time frame of 09 months from the date of this order.
- (xi) Any person interested shall, however, be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

25. The Petitioner Companies shall within thirty days of the date of the receipt of this Order or on sanction of the Scheme, whichever is later, cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the Transferor Companies shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Companies on the file kept by him in relation to the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

26. **The Second Motion Petition, i.e., CP(CAA) No. 41/Chd/Hry/2023 is allowed, accordingly.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)