IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH - II, CHENNAI

CP (CAA)/37(CHE)/2025
In
CA (CAA)/12(CHE)/2024

(Filed under Sections 230 to 232 of the Companies Act, 2013)

In the matter of Scheme of Arrangement and Amalgamation between Vivriti Capital Limited (Demerged Company) With Hari And Company Investments Madras Private Limited (Resulting Company) and Vivriti Next Limited (Amalgamating Company), Vivriti Asset Management Private Limited (Amalgamating Company) With Vivriti Funds Private Limited (Resulting Company) their respective Shareholders and Creditors and their respective Shareholders

VIVRITI CAPITAL LIMITED,
CIN: U65929TN2017PLC117196,
Having its Registered Office at
Prestige Zackria Metropolitan No. 200/1-8, 2nd Floor,
Block – 1, Annasalai,
Chennai, Tamil Nadu – 600 002.
Represented by its director, Mr. Vineet Sukumar.

... 1st Petitioner / Demerged Company

With

HARI AND COMPANY INVESTMENTS MADRAS PRIVATE LIMITED,
CIN: U65991TN1989PTC017066,
Having its Registered Office at
Prestige Zackria Metropolitan No. 200/1-8, 8th Floor,
Block – 1, Annasalai, Anna Road,
Chennai, Tamil Nadu – 600 002.
Represented by its director, Mr. Vineet Sukumar.

... 2nd Petitioner / Resulting Company - 1

AND

VIVRITI NEXT LIMITED,
CIN: U74999TN2017PLC117539,
Having its Registered Office at
Prestige Zackria Metropolitan No. 200/1-8, 8th Floor,

Block – 1, Annasalai, Anna Road,
Chennai, Tamil Nadu – 600 002.
Represented by its director, Mr. Vineet Sukumar.

... 3rd Petitioner

VIVRITI ASSET MANAGEMENT PRIVATE LIMITED,
CIN: U65929TN2019PTC127644,
Having its Registered Office at
Prestige Zackria Metropolitan No. 200/1-8, 1st Floor,
Block – 1, Annasalai,
Chennai, Tamil Nadu – 600 002.
Represented by its director, Mr. Vineet Sukumar.

... 4th Petitioner / Amalgamating Company

With

VIVRITI FUNDS PRIVATE LIMITED,
CIN: U66300TN2003PTC052025,
Having its Registered Office at
Prestige Zackria Metropolitan No. 200/1-8, 8th Floor,
Block – 1, Annasalai,
Chennai, Tamil Nadu – 600 002.
Represented by its director, Mr. Vineet Sukumar.

... 5th Petitioner / Resulting Company - 2

Order Pronounced on ***9th December 2025***

CORAM

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present: -

For Petitioners	*: T.K.Bhaskar, K.Harishankar, S.Niranjan Rao, Shakthivelan Manisekaran , Advocates*
For Regional Director	*: Mr. Avinash Krishnan R avi, Advocate*
For Income Tax Dept.	*: Mr. Rajkumar Jhabakh, Advocate*
For Official Liquidator	*: Mr.B.Palani*

ORDER

(Hearing Conducted though Hybrid Mode)

1. This Joint Company Petition has been filed by **VIVRITI CAPITAL LIMITED** *(hereinafter referred as 1st Petitioner Company)* and **HARI AND COMPANY INVESTMENTS MADRAS PRIVATE LIMITED** *(hereinafter referred as 2nd Petitioner Company)* AND **VIVRITI NEXT LIMITED** *(hereinafter referred as 3rd Petitioner Company)*, **VIVRITI ASSET MANAGEMENT PRIVATE LIMITED** *(hereinafter referred as 4th Petitioner Company)* and **VIVRITI FUNDS PRIVATE LIMITED** under section 230-232 of the Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') for approval of the Scheme of Amalgamation (hereinafter referred to as the '**SCHEME'**) proposed between the Petitioners Company.

2. Affidavit have been filed in support of the petitions sworn in by Mr. Vineet Sukumar for all the Petitioner Companies in the capacity of Authorised Representative which is authorised vide Board Resolution dated 27.06.2024.

3. **1ST MOTION APPLICATION**

The Petitioner Companies had filed First Motion Application vide CA (CAA) / 12(CHE) / 2025 and sought directions for Dispensation/ Convening the meeting of its Members/ Shareholders and Creditors regarding approval of the proposed Scheme. Based on the submissions, this Tribunal vide Order dated 05.03.2025 ordered for dispensation of the meetings of Equity Shareholders/ Members, Secured & Unsecured Creditors of the Petitioner Companies.

4. **SCHEME SUMMARY**

The Scheme provides for the Amalgamation of **VIVRITI CAPITAL LIMITED** With **HARI AND COMPANY INVESTMENTS MADRAS PRIVATE LIMITED** AND **VIVRITI NEXT LIMITED, VIVRITI ASSET MANAGEMENT PRIVATE LIMITED** With **VIVRITI FUNDS PRIVATE LIMITED,** their respective

Shareholders and Creditors. Both the Petitioner Companies come under the jurisdiction of this Tribunal.

5. **RATIONALE OF THE SCHEME**

The rationale and benefits of the Scheme are briefed in Clause C of the Scheme as follows,

"The Scheme would, inter alia, have the following benefits:

(a) the separation of online platform business and lending/asset management business of the Vivriti group;

(b) the separation would ensure that the NBFC (as defined hereinafter) and asset management businesses are housed in separate legal entities within the Vivriti group each of which would be completely regulated by the respective regulations without any conflicts/restrictions resulting from the two sets of regulations;

(c) the balance sheet of the NBFC Business (as defined hereinafter) will not be subject to/affected by the AMC Business (as defined hereinafter) (including its debt) which would reduce the risk on the balance sheet of the NBFC Business;

(d) this Scheme will unlock value and provide investors flexibility and direct access over the various businesses within the Vivriti group;

(e) this Scheme will provide strategic and financial flexibility for overseas expansion; and

(f) this Scheme will enable the Vivriti group to attract business specific investors and strategic partners and to provide better flexibility in accessing capital, focused strategy and specialisation for sustained growth, thereby enabling de-leveraging of the respective businesses in the longer-term."

It is stated that the Board of Directors of both the Petitioner Companies have proposed the Scheme of Amalgamation. This Scheme provides for various other matters consequential or otherwise integrally connected herewith.

6. In the second motion Petition filed by the Petitioner Companies, this Tribunal vide order dated 28.05.2025 directed the Petitioner Companies to issue notice to the Statutory / Regulatory Authorities concerned as well as directed to issue paper publication.

7. In compliance with the said directions issued by this Tribunal, the Petitioner Companies effected paper publications in ***"Hindu Business Line"*** in English (All India Edition) and ***"Makkal Kural"*** in Tamil (Tamil Nadu Edition) on 18.06.2025. The notices were also served to

(i) Regional Director, Southern Region, Chennai,

(ii) Official Liquidator,

(iii) Income Tax Department

(iv) Bombay Stock Exchange and other regulators.

Pursuant to the service of notice of the petitions, the following statutory authorities have responded.

8. STATUTORY / REGULATORY AUTHORITIES

8.1. REGIONAL DIRECTOR

8.1.1. The Regional Director (RD), Southern Region to whom the notice was served on 05.06.2025, has filed its report on 02.09.2025 and has expressed its 'Observations' and 'No Objection' to the Scheme as follows,

> *"3. That as per Clause m of Part 1 of the Scheme provides the "Appointed Date" means the same date as the Effective Date.*
> *4. That there are 442 (Four Hundred and Forty Two) Equity Shareholders in the Demerged Company/ Petitioner Company-1, the consent by way of Affidavits have not been obtained from the equity shareholders, therefore this Hon'ble Tribunal vide its order dated 05.03.2025 in CA(CAA)/12/(CHE)2025 has directed to convene the meeting. Accordingly, the meeting was held on 26.04.2025, at 10:30 A.M. (IST) (Originally commenced at 10:00 AM (IST) and adjourned for 30 minutes due to want of quorum) in pursuance to the directions of the Hon'ble Tribunal. There were 91 shareholders who voted and 100% of the Votes was in favour of the resolution.*
> *With respect to preference shareholders, it is represented that there were 5 (Five) Preference Shareholders in the Company and the list of shareholders to this effect is placed on record as per the Certificate issued by the Chartered Accountant and whose consents by way of affidavits forming 100% value had been obtained and the necessity to convene and hold a meeting was dispensed with by this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025.*

With respect to Secured Creditors, it is represented that there are 45 (Forty Five) Secured Creditors in the Company whose consents have not been obtained, hence, this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has directed to convene the meeting. Accordingly, the meeting was held on 26.04.2025 at 12.30 P.M. (IST), in pursuance to the directions of this Hon'ble Tribunal. There were 37 Secured Creditors who voted and 100% of the Votes was in favour of the resolution.

With respect to Non-Convertible debenture holders, it is represented that there are 2 (Two) Non-Convertible Debenture Holders in the Company whose consent by way of affidavit forming 100% value have been obtained, hence, the necessity of convening meeting was dispensed with by this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025.

With respect to Unsecured Creditors, it is represented that there were 10 Unsecured Creditors in the Company, whose consent was not given, and this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has directed to Convene the Meeting. Accordingly, the meeting was held on 26.04.2025 at 3.00 P.M. (IST), in pursuance to the directions of this Hon'ble Tribunal. There were 7 Unsecured Creditors who voted and 100% of the Votes was in favour of the resolution.

5. That there are 2 (Two) Equity Shareholders in the Resulting Company-1/Petitioner Company-2, whose consents by way of Affidavit have been obtained, therefore this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has dispensed with necessity of convening of the meeting of equity shareholders of Resulting Company-1. There is Nil Preference Shareholders, Nil Secured Creditors, Nil Non- Convertible Debenture Holders and Nil Unsecured Creditors. The Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 had ordered that the necessity to convene and hold a meeting does not arise.

6. That there are 7 (Seven) Equity Shareholders in the Petitioner Company-3, whose consents by way of Affidavit have been obtained, hence, this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has dispensed with necessity of convening, holding and conducting the meeting of equity shareholders of Petitioner Company-3. There are 5 (Five) Preference Shareholders and the List of shareholders to this effect is placed on record as per the certificate issued by the Chartered Accountant and therefore the necessity to convene the meeting was dispensed with. There were Nil Secured Creditors, Nil Non-Convertible Debenture Holders, Nil Unsecured Creditors. The Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 had ordered that the necessity to convene and hold a meeting does not arise.

7. That there are 13 (Thirteen) Equity Shareholders in the Petitioner Company-4, whose consents by way of Affidavit have been obtained, hence, this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has dispensed with convening of the meeting of equity shareholders of Petitioner Company-4. There are 4 (Four) Preference Shareholders and the list of shareholders to this effect is placed on record as per the certificate issued by the Chartered Accountant and therefore the necessity to convene and hold a meeting was dispensed with. There is 1(One) Secured Creditor, 1 (One) Non-Convertible Debenture Holder and 1(One) Unsecured Creditor in the Company whose consents by way of affidavit forming 100% value have been obtained and is placed on record, therefore, the necessity to convene and hold a meeting was dispensed with by this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025.

8. That there are 2 (Two) Equity Shareholders in the Petitioner Company-5/Resulting Company-2, whose consents by way of Affidavit have been obtained, hence, the Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 has dispensed with necessity of convening of the meeting of equity shareholders of Petitioner Company- 5/Resulting Company-2. There is Nil Preference Shareholders. There were Nil Secured Creditors, Nil Non-Convertible Debenture Holders and this Hon'ble Tribunal vide its aforesaid order dated 05.03.2025 had ordered that the necessity to convene meeting was dispensed with. With respect to Unsecured Creditors there are 2 (Two) Unsecured Creditors in the Company whose consent by way of affidavits forming 100% value have been obtained, hence, the necessity to convene and hold a meeting was dispensed with by the Hon'ble NCLT, Chennai Bench vide its aforesaid order dated 05.03.2025.

9. That as per Clause 20 of Part-II of the Scheme, all NBFC Business Employees shall become the Employees of the Resulting Company 1, subject to the provisions hereof without any break in their service and on the basis of continuity of service and, on terms and conditions no less favourable than those on which they are engaged by the Demerged Company and without any interruption of service as a result of the Demerger 1.

10. That as per Clause 70 of Part- IV of the Scheme, all employees of Amalgamating Company shall become the Employees of the Amalgamated Company, subject to the provisions hereof without any break in their service and on the basis of continuity of service and, on terms and conditions no less favourable than those on which they are engaged by the Amalgamating Company and without any interruption of service as a result of the Amalgamation.

11. That as per Clause 105 of Part -V of the Scheme, upon the coming into effect of this Scheme, all AMC Business Employees shall become the Employees of the Resulting Company 2, subject to the provisions hereof without any break in their service and on the basis of continuity of service and, on terms and conditions no less favourable than those on which they are engaged by the Demerged Company and without any interruption of service as a result of the Demerger 2.

….

14. That as per Clause 91.1 of Part-IV of the Scheme, as an integral part of the scheme, and, upon the coming into effect of the scheme, the authorized share capital of the Amalgamated Company shall automatically stand increased, without any further act, instrument or deed on the part of the Amalgamated Company, such that upon the effectiveness of the scheme, the authorized share capital of the Amalgamated Company shall be Rs. 168,59,70,630 (Rupees One Hundred Sixty-Eight Crores Fifty Nine Lakhs Seventy Thousand Six Hundred Thirty only) comprising of 640,00,000 equity shares of Rs. 10/- (Rupees Ten only) each and 10,26,37,063 compulsorily convertible preference shares of Rs. 10 (Rupees Ten only) each and 19,60,000 Class B differential equity shares of Rs.10 (Rupees Ten only) each, without any further act, deed, resolution, instrument or writing. The capital clause of the Memorandum of Association of the Amalgamated Company shall, upon the coming into effect of this scheme and without any further act, deed, instrument, resolution, or writing be altered.

….

16. That as per the report dated 14.08.2025 of ROC Chennai, the Petitioner, Demerged, Resulting Company are regular in filing their Annual returns and Balance sheet up to Financial Year ended 31.03.2024. No prosecution / Technical scrutiny /inspection / complaints are pending against the Petitioner Companies.

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18. That it is further reported that, it is pertinent to state that M/s. Vivriti Next Limited, third applicant is neither Transferor /Demerged Company nor Transferee/Resultant Company. However, as per the Scheme the said company will issue shares to the Demerged Companies upon effective of the Scheme. In this regard, ROC Chennai has sought clarification vide letter dated 18.07.2025. The company has replied on 22.07.2025 that Vivriti Next Limited (VNL) is the holding company of Hari and Company Investments Madras Private Limited (Resulting Company -1), holds 99.9% shares and Vivriti Funds Private Limited (Resulting Company-2) and subsequent to the approval of the Scheme also, the same group holding structure is to be maintained. Accordingly, VNL will issue shares to the

shareholders of Vivriti Capital Limited in consideration of the demerger of the NBFC business from VCL into HCIMPL, and the transfer of the Asset Management Company (AMC) business from VCL into VFPL.

….

20. That the Demerged/Amalgamated Company and Amalgamating Company may be directed to undertake to ensure the compliance with the observation made by SEBI /Stock Exchanges.

21. That the Resulting Companies may be directed to undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 and Section 240 of the Companies Act, 2013 that the liability in respect of offences committed under Companies Act, 2013 by the Company and its officers in default of the Demerged Company prior to merger/amalgamation shall Continue after such merger/amalgamation.

22. That the Resulting Companies may be directed to file an amended Memorandum of Association containing, amendment to the capital clause for record purposes with the Registrar of Companies.

23. The Scheme of Amalgamation filed with the application has been examined and submissions have herein above made more particularly at para 17, 18, 19, 20, 21 & 22, it is humbly prayed that this Hon'ble Tribunal may kindly take note of the same and dispose of the matter on merits and pass such order/orders as deemed fit and proper."

8.2. INCOME TAX DEPARTMENT

8.2.1. The Income Tax Department to whom the notice was served on 05.06.2025, has filed its report on 30.06.2025 and has expressed its 'Observations' and 'No Objection' to the Scheme as follows:

"3. In addition to and without prejudice to the above, it is respectfully submitted that the issuance of such notice and filing of the present representation is a procedural requirement under Section 230(5) of the Companies Act, 2013 and does not limit or prejudice the statutory rights of the Income Tax Department to proceed independently under the provisions of the Income Tax Act, 1961, including the right to reopen or reassess any completed assessments, enforce tax claims, or undertake any proceedings to safeguard the revenue.

4. Reliance is placed on the judgement of the Supreme Court in Marshall Sons & Co India Ltd Vs Income Tax Officer (AIR 1997SC1763 & MANU/SC/0407/1997), wherein the Hon'ble Court has held in para 17 of its Judgement as under:

We, however, make it clear that we have not expressed any opinion on the plea of the learned Counsel for the Revenue that the amalgamation itself is a device designed to evade the taxes legitimately payable by the subsidiary company. If the Income Tax authorities think that, they are entitled to raise this question in the proceedings under the Income Tax Act, it is open to them to do so by way of a separate proceeding according to law."

8.2.2. It is stated that in the present scheme of Amalgamation even though the Transferor Company gets dissolved, the liabilities of the same will be delved upon this Petitioner Company / Transferee Company and therefore the Income Tax Department can proceed with their proceedings if any and approval of this Scheme does not cause any prejudice.

8.3. OFFICIAL LIQUIDATOR

8.3.1. The Official Liquidator to whom the notice was served on 05.06.2025, has filed its report on 29.07.2025 and has expressed its 'Observations' and 'No Objection' to the Scheme as follows,

"2. The Chartered Accountants are also of the opinion that it seems the affairs of Transferor Company have not been conducted in a manner prejudicial to the interest of the stakeholders or to public.

3. That in accordance with the basis of notice served on 25/03/2025 and notice of petition dated 9/6/2025 to the Official Liquidator by the 4th Petitioner company/Amalgamating Company and also considering the conclusion made by the Chartered Accountants in their report dated 23/05/2025 as detailed above in para 2 of the report, the specific representation of Official Liquidator in respect of Amalgamating Company and connected issues in the composite scheme is humbly submitted as follows:-

(i) <u>Auto modification of content of scheme, post its sanction, without prior consent of Tribunal:</u> That, the Clause B.11 of the Part I of the scheme (regarding compliance with Tax Law) read with clause 3.(h) of Part VII of the Scheme providing for auto modification of content of the scheme, post its sanction by this Hon'ble Tribunal, it is submitted that such auto modification of the content of the scheme post its sanction, to be in compliance with Income Tax Law, without the previous approval / sanction of this Hon'ble Tribunal will be in violation of section 231(1)(b) of the Companies Act, 2013 as every modification of the content of the Scheme, post its sanction, requires prior approval again by this Hon'ble Tribunal. Hence, this

Hon'ble Tribunal may be pleased to direct the Transferor and Transferee Companies to delete / modify the Clause B.11 of the Part I of the Scheme and Clause 3.(h) of the Part VII of the Scheme by way of amendment to the scheme proposed, so as to ensure that no such auto amendment/modification of the Scheme takes place, post its sanction by this Hon'ble Tribunal or to submit an undertaking to this Hon'ble Tribunal to the effect that such auto modification of the content of the scheme will not be implemented without specific prior approval of this Hon'ble Tribunal received by the companies under section 231(1)(b) of the Companies Act, 2013.

(ii) <u>Specific calendar date is not given as Appointed Date, hence further compliances required:</u> That, the clause B.13.(m) of the scheme define Appointed Date as same date as the Effective Date. The clause B.13.(ff) define effective date as the date which will be the first day of the month following the month in which the last of the conditions and matters referred to in Clause 6 of Part VII have occurred or have been fulfilled or waived, as applicable in accordance with the scheme. The appointed date / effective date is future oriented based on decisions of the management of the companies in the scheme without any fixed set timeline. Hence, this Hon'ble Tribunal may be pleased to direct the companies to amend the Clause 6(c) of Part VII of the scheme bringing time limit of 30 days prescribed under 232(5) of the Companies Act 2013, and further direct the companies to amend the Clause 6(f) of Part VII of the scheme to immediately issue consideration shares soon after the sanction of the scheme by this Hon'ble Tribunal.

(iii) <u>Appointed Date not known as on date, requirement of further report of Official Liquidator up to the appointed date:</u> In this case since the appointed date is not determinable, yet the Official Liquidator has examined the transactions (through CA appointed in this behalf) up to last financial year ending on 31.3.2025, and such examination is required to be extended up to the amalgamation date before submitting the final report covering the transactions of the amalgamating company for the period up to a day prior to such appointed date. Hence, the present report of Official Liquidator covers the period up to 31.3.2025 and not up to the amalgamation date, and hence this Hon'ble Tribunal may be pleased to direct the companies to issue further notice to the Official Liquidator once appointed Date is achieved as per the conditions, so that the Official Liquidator can file further report on the transactions from 01.04.2025 till the appointed date to be determined.

(iv) <u>Mismatch in Paid up capital of Vivriti Asset Management Pvt Ltd (Amalgamating Company) as disclosed in Scheme and Master Data, similarly for Vivriti Next Pvt Ltd:</u> That the clause 16.3 of the Part I of the Scheme specify that the paid up capital of Vivriti Asset Management Pvt Ltd (Amalgamating Company) as

on 21.6.2024 was Rs 35,74,29,770, however, as per Master Data downloaded from MCA21/RoC Portal, it is noticed that its paid up capital stood at Rs 31,29,47,97,660 i.e. on lower side. Hence, the Hon'ble Tribunal may be pleased to direct the companies to clarify to this Hon'ble Tribunal as to the reasons for such reduction of paid up capital post June 21, 2024. Similarly, there is such variance in respect of paid up capital of Vivriti Next Pvt Ltd disclosed in Clause 16.5 of the Part I of the Scheme (Rs 100,86,667) with the Master Data (Rs 95,74,33,540) which need be clarified similarly by the Companies.

(v)<u>Transfer of Securities in the nature of purchase / sale under section 56 of Companies Act, 2013 is brought in as part of Scheme of Arrangement (Part II of scheme):</u> That, the Clause 17.1 of Part II of the Scheme (Transfer of CCDs) provide for sale of CCDs (compulsorily convertible Debentures) issued by the Amalgamated Company/Demerged Company (Vivriti Capital Limited) from its holders and to be purchased by the Vivriti Next Private Limited (VNPL- which is neither demerged company / resulting company / amalgamating company / amalgamated company), that too in the manner as may be mutually agreed between CCD holders and VNPL. Part II of the Scheme further provide that this sale / purchase shall take place before the rest of the main scheme is implemented / given effect to as specified in Part III-VI of the Scheme (that involves demerger and amalgamation). Accordingly, it is prima facie a case of transfer of securities in the nature of its sale / purchase for which the compliance with section 56 of the Companies Act, 2013 (transfer of Securities) is to be made. Hence, if the present scheme (with Part II) is allowed, then it would become a substitute for regular securities transfer transactions between two parties through merger/arrangement between previous owner and another company. This may be clarified by the Companies to this Hon'ble Tribunal.

(vi)<u>Consideration is sought to be issued by third party company and not by the resulting company 1 / resulting company 2 themselves:</u> That the clause 29.3.1(ii) read with 45 of the Part III of the Scheme and clause 105.3.1(iii) read with 122 of the Part V of the scheme specify that Vivriti Next Private Limited (VNPL - which is neither demerged company / resulting company / amalgamating company / amalgamated company) will issue fresh employee stock option for Demerger 1 / 2 consideration shares to the option holders and shareholders respectively of the Demerged Company / Amalgamated Company (Vivriti Capital Limited) instead of by the resulting company-1 and 2 respectively (Hari and Company Investments Madras Private Limited and Vivriti Funds Private Limited). The reasons for the same need be clarified by the companies to this Hon'ble Tribunal, as to whether such issue of consideration by VNPL is due to its position as Holding Company of

Resulting Company 1 and Resulting Company 2 or otherwise. If so, whether such holding company and wholly owned subsidiary relationship existed as on date and would exist on appointed date which is not known yet.

(vii)<u>Name change of resulting company 1 (Hari) with name of Amalgamated Company (VCL):</u> That, the clause 55 to 57 of the Part III of the Scheme provide for name change of resulting company 1 (Hari) to the name of demerged company / amalgamated company (Vivriti Capital Limited- VCL), whereas it is noticed that VCL is not getting dissolved without winding up through this scheme and its legal will continue post implementation of this scheme. In this regard, it is submitted to this Hon'ble Tribunal that the adoption of existing name of Amalgamated Company (VCL) by the Resulting Company 1 (Hari) that too when VCL will continue to be in existence may create confusion in the minds of general public and other stakeholders. Besides it may also create confusion with the regulators like Income Tax, GST, MCA etc. as it may create impression that it is same VCL that continued as VCL though scheme propose to lend the name of the VCL to another company (Hari) while VCL itself continue to be in existence even after the scheme. Further, as per Rule 8A(1)(w) of Companies (Incorporation) Rules, 2014 read with Section 4(2) of the Companies Act, 2013, the proposed names may need specific direction of this Hon'ble Tribunal as part of this composite scheme. Further, the resulting company 1 need to mandatorily follow the additional process to make an application to the RoC-CRC, Manesar (under MCA) as per Rule 9 of the Companies (Incorporation) Rules, 2014 read with Section 4(4)(b) of the Companies Act, 2013 and decision of RoC-CRC on reservation of proposed names shall be binding. Hence, the Hon'ble Tribunal may be pleased to direct the resulting company 1 company to submit an undertaking that they would seek proposed name change as per prescribed procedure under Rule 9, ibid.

(viii)<u>Name change of Amalgamated Company (VCL) to a new Name:</u> That the clause 58 to 60 of Part III of the Scheme provide for name change of amalgamated company (VCL) to a new name Vivriti Financial Services Limited, whereas VCL will continue to be in existence with its residual business after undergoing 2 demergers and one merger, through this scheme. The reasons for such change of name need be clarified by the companies to this Hon'ble Tribunal, as to whether such change is due to the requirement of matching the name of the company with left over residual business activity of VCL (Amalgamated Company) if so whether they pertain to financial services; or otherwise. Further, as per Rule 8A(1)(w) of Companies (Incorporation) Rules, 2014 read with Section 4(2) of the Companies Act, 2013, the proposed names may need specific direction of this Hon'ble Tribunal as part of this composite scheme.

Further, the Amalgamated Company (VCL) need to mandatorily follow the additional process to make an application to the RoC-CRC, Manesar (under MCA) as per Rule 9 of the Companies (Incorporation) Rules, 2014 read with Section 4(4)(b) of the Companies Act, 2013 and decision of RoC-CRC on reservation of proposed names shall be binding. Hence, the Hon'ble Tribunal may be pleased to direct the Amalgamated Company to submit an undertaking that they would seek proposed name change as per prescribed procedure under Rule 9, ibid.

(ix)<u>Valuation report is not relevant for future appointed date not known as it is made for valuation date 31.3.2024, further resulting company 1 and 2 are not issuing any shares after its valuation enterprise level / per share basis:</u>

a) That, the consideration provided in clause 84 of Part IV the scheme providing for issue of consideration shares for amalgamation of VAMPL with VCL is based on Valuation report dated 24.6.2024 is made for valuation valid for valuation date 31.3.2024, whereas the amalgamation date (transfer of all assets and liabilities of VAMPL) is future event based and not known yet. Hence, the valuation and share exchange ratio relevant for amalgamation date of 1.4.2024 cannot be basis for future appointed date and hence it need fresh valuation valid for the appointed date once known. Hence, this Hon'ble Tribunal may be pleased to direct the companies to file further application/IA with revised valuation report relevant for the appointed date.

b) That the consideration provided in clause 29.3.1(ii) read with 45 of the Part III of the Scheme and clause 105.3.1(iii) read with 122 of the Part V of the scheme provide for issues of consideration shares / ESOPs for demerger 1 and 2 respectively is based on valuation report dated 24.6.2024 is made for valuation valid for valuation date 31.3.2024, whereas the demerger date (transfer of all assets and liabilities of demerger undertaking 1 and 2 to resulting company 1 and resulting company 2 respectively) is future event based and not known yet. Hence, the valuation and quantum of consideration shares relevant for demerger date of 1.4.2024 cannot be basis for future appointed date and hence it need fresh valuation valid for the appointed date once known. Hence, this Hon'ble Tribunal may be pleased to direct the companies to file further application/IA with revised valuation report relevant for the appointed date. Further, the valuation report did not consider the valuation of enterprise / per share in respect of resulting company 1 and 2 at all before arriving consideration shares.

c) That the CA appointed to scrutinise the books and records of amalgamating company (VAMPL) reported, inter-alia, as detailed in sub- para 2.J.3 of this report (page no.13 / 14 of this report) that the allotment procedure for partly paid up shares has to be arrived at.

(x) Common Control exists as on Appointed Date or not, as per Ind AS 103: That the clause 93 of Part IV of the scheme provide for accounting for amalgamation in the books of Amalgamated Company under Appendix C of Ind AS 103 considering it as business combination under common control. It is submitted that such common control need be in existence as on Appointed Date (amalgamation date / transfer date / effective date all same in this scheme as defined) and hence it needs clarification how it is satisfying the criteria of common control as on date and would be same on the appointed date which is not known yet. Hence, this Hon'ble Tribunal may be pleased to seek clarification in this regard from the companies.

(xi) Name change of resulting company 2 (Vivriti Funds) with name of Amalgamating Company (VAMPL): That, the clause 137to 139 of the Part V of the Scheme provide for name change of resulting company 2 (Vivriti Funds, which gets its business through demerger 2 from VCL) to the name of Amalgamating company (VAMPL) which is getting dissolved through this scheme. In this regard, it is submitted to this Hon'ble Tribunal that the adoption of such name of Amalgamating Company (being dissolved) by the Resulting company 2 may create confusion in the minds of general public and other stakeholders. Besides it may also create confusion with the regulators like Income Tax, GST, MCA etc. as it may create impression that the Amalgamating Company (VAMPL) is still in existence however it will be not in existence upon sanction of the scheme and achieving the effective date/dissolution date. Further, as per Rule 8A(1)(w) of Companies (Incorporation) Rules, 2014 read with Section 4(2) of the Companies Act, 2013, the proposed names may need specific direction of this Hon'ble Tribunal as part of this scheme of amalgamation. Further, the Resulting company 2 need to mandatorily follow the additional process to make an application to the RoC-CRC, Manesar (under MCA) as per Rule 9 of the Companies (Incorporation) Rules, 2014 read with Section 4(4)(b) of the Companies Act, 2013 and decision of RoC-CRC on reservation of proposed names shall be binding. Hence, the Hon'ble Tribunal may be pleased to direct the Resulting Company 2 to submit an undertaking that they would seek proposed name change as per prescribed procedure under Rule 9, ibid.

(xii)Rationale of the Scheme is given at Group level without defining it: That the term Vivriti group not defined anywhere in the scheme as referred to in clause C.10 of Part I of the Scheme specifying the Rationale and accordingly the rationale of the scheme is not made out clearly. This may be clarified by the Companies to this Hon'ble Tribunal, along with details of compromise / arrangement at each company level who is decided to enter into compromise / arrangement as per section 230 of the Companies Act, 2013.

(xiii) As per audited financials of VCL entire business is financing single segment, but this scheme envisage 3 different business segments/undertakings; etc.: That as per latest audited financials of Amalgamated Company (VCL) as at 31.3.2024 and as per its Note 3.20 (copy enclosed and marked as Annexure- 2), there are no 3 different undertakings / independent businesses within it as per its audited financials as at 31.3.2024, in order for the companies in the proposed scheme to consider separate demerger of 3 different undertakings of VCL by calling it as demerged undertaking 1, demerged undertaking 2 and residual business capable of considering it as undertaking for the purpose of the present scheme. Hence, it need clarification how the companies have brought in a non-existent separate business undertakings/ business segments and seek to demerge them into 2 different companies and leaving residual business remain with VCL, when there are no such separate business segments as duly reported in latest audited financial statements of VCL. Further, as per Explanation below section 180(1)(a) of the Companies Act, 2013, the undertaking is defined to the effect that it shall mean an undertaking in which the investment of the company exceeds 20 % of its net worth or generates 20% of total income of the company during the previous financial year, as per audited financial statements. It need clarification along with supporting documentary evidence showing the assets and liabilities break up for each demerger undertaking and residual business and matching with whole of the company's assets and liabilities in respect of VCL.

5. In view of the above, the Official Liquidator humbly submits that the above facts for consideration of this Hon'ble Tribunal and prays for the following orders:-

a. To take this report on record and consider the report of M/s. Siv, Ram & Raj, Chartered Accountants and issue directions to the Transferor and Transferee Companies, as deem fit;

b. To fix remuneration payable to the auditor who has scrutinized the affairs of the Transferor Company for the period of 5 years up to latest financial year i.e. from 2020-21 to 2024-25 (Appointed date not known yet);

c. To direct the 4th Petitioner Company/Amalgamating Company to deposit such remuneration / fee within the stipulated period as may be prescribed by this Hon'ble Tribunal,

d. And pass such order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

8.4. RESERVE BANK OF INDIA:

8.4.1 The Official Liquidator to whom the notice was served on 05.06.2025, has expressed its 'Observations' and 'No Objection' to the Scheme as follows,

"Application for proposed restructuring involving demerger of Vivriti Capital Limited into Hari and Company Investments Madras Private Limited

Please refer to your letter dated July 11, 2024 on the captioned subject. In this connection, we advise that the Bank has no objection to the proposed composite scheme of arrangement involving demerger of Vivriti Capital Limited into Hari and Company Investments Madras Private Limited subject to the following conditions.

i. *You may submit a copy of the NCLT order approving the scheme of amalgamation within 15 days of the said order.*
ii. *You may submit the post-merger / amalgamation balance sheet and Statutory Auditor's Certificate (SAC) of the resultant company i.e, Hari and Company Investments Madras Private Limited after the implementation of the scheme.*
iii. *After the merger process is completed, the CoR of Vivriti Capital Limited must be surrendered for cancellation.*
iv. *You are advised to give a public notice as required under para 42.3.1 of Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023.*
v. *In addition, the resultant company is advised to submit required documents for change of name i.e, from Hari and Company Investments Madras Private Limited to Vivriti Capital Limited after the scheme is approved by NCLT."*

8.5. BOMBAY STOCK EXCHANGE:

"We are in receipt of the Observation letter regarding The Composite Scheme Of Arrangement under Sections 230 To 232 Of The Companies Act, 2013 And other applicable provisions and rules framed thereunder among Vivriti Capital Limited (Demerged Company/ Amalgamated Company), Hari And Company Investments Madras Private Limited (Resulting Company 1), Vivriti Next Private Limited (VNPL), Vivriti Asset Management Private Limited (Amalgamating Company),

Vivriti Funds Private Limited (Resulting Company 2) and their respective shareholders as required under SEBI Master circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/665 dated November 23, 2021 along with SEBI circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156 dated November 17, 2022 and Regulation 59A & 94A & Schedule XI OF Listing Regulations and Chapter XII of the SEBI operational Circular ref. no. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000103 dated July 29,2022(as amended from time to time), SEBI (LODR) Regulations, 2015; SEBI vide its letter dated September 05, 2024, has inter alia given the following comment(s) on the Scheme of Amalgamation:

A. "The entities involved in the proposed scheme shall not provide any mis-statement or furnish false information with regard to disclosures to be made in the draft scheme of amalgamation as per Chapter XII of the Operational Circular, for listing obligations and disclosure requirements for Non-Convertible Securities, Securitized Debt Instrument and/ or Commercial Paper."

B. "The entities involved in the scheme are advised that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before Hon'ble NCLT and the Company obliged to bring the observations to the notice of Hon'ble NCLT."

C. "Company shall ensure that additional information, if any, submitted by the Listed Entity, after filing the Scheme with the Stock Exchange, from the date of receipt of this letter, is displayed on the websites of the Listed Entity and the Stock Exchange."

D. "The Listed Entity involved in the proposed scheme shall disclose the No-Objection letter of the Stock Exchange on its website within 24 hours of receiving the same."

E. "Company shall ensure to disclose all details of ongoing adjudication & recovery proceedings, prosecution initiated and all other enforcement action taken, if any, against the Resultant Company, its promoters and directors are disclosed in the scheme filed before Hon'ble NCLT."

F. "The Resultant Company shall ensure that the "Scheme" shall be acted upon subject to the entities complying with the relevant clause mentioned in the scheme document."

G. "Company to ensure that no changes to the draft Scheme except those mandated by the regulators/ authorities tribunals shall be made without specific written consent of SEBI."

H. "Company shall ensure that the entities involved in the proposed scheme have compiled with the relevant provisions of the Companies Act, 2013, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Covenants of the Debenture Trust Deeds entered with the Debenture Trustee(s) any other relevant regulations and circulars."

I. "It is to be noted that the petitions are filed by the Company before Hon'ble NCLT after processing and communication of comments/observations on draft Scheme by SEBI/Stock Exchange. Hence, the Company is not required to send notice for representation as mandated under section 230(5) of Companies Act, 2013 to SEBI again for its comments/observations/representations."

Accordingly, based on aforesaid comment offered by SEBI, the company is hereby advised:

To provide additional information, if any, (as stated above) along with various documents to the Exchange for further dissemination on Exchange website

To ensure that additional information, if any, (as stated aforesaid) along with various documents are disseminated on their (company) website.

To duly comply with various provisions of the circulars.

In light of the above, we hereby advise that we have no adverse observations with limited reference to those matters having a bearing on listing/de-listing/continuous listing requirements within the provisions of Listing Agreement, so as to enable the company to file the scheme with Hon'ble NCLT.

Further, where applicable in the explanatory statement of the notice to be sent by the company to the shareholders, while seeking approval of the scheme, it shall disclose information about unlisted company involved in the format prescribed for abridged prospectus as specified in the SEBI Mater Circular SEBI/HO/DDHS/DDHS-PoD-1/P/CIR/2024/48 dated May 21, 2024.

Kindly note that as required under Regulation 59A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the validity of this Observation Letter shall be six months from the date of this Letter, within which the scheme shall be submitted to the NCLT.

The Exchange reserves its right to withdraw its 'No adverse observation' at any stage if the information submitted to the Exchange is found to be incomplete / incorrect / misleading / false or for any contravention of Rules, Bye- laws and Regulations of the Exchange, Listing Agreement, Guidelines/Regulations issued by statutory authorities.

Please note that the aforesaid observations does not preclude the Company from complying with any other requirements.

Further, it may be noted that with reference to Section 230 (5) of the Companies Act, 2013 (Act), read with Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (Company Rules) and Section 66 of the Act read with Rule 3 of the Company Rules wherein pursuant to an Order passed by the Hon'ble National Company Law Tribunal, a Notice of the proposed scheme of compromise or arrangement filed under sections 230-232 or Section 66 of the Companies Act 2013 as the case may be is required to be served upon the Exchange seeking representations or objections if any."

8.6. REPLY TO THE STATUTORY OBJECTIONS

The Petitioner companies have filed their response to the statutory objections and the same is extracted below:

Reply to the Regional Director:

12. The content of Paragraph 17 of the Report is with respect to the observations of the auditor in the independent auditor report viz a viz the absence of Type II SOC report, which constitutes one of the reporting requirements for the auditor. It is respectfully submitted that one such requirement obliges the auditor to comment on the audit trail maintained in the Enterprise Resource Planning system. For this purpose, the Company is necessarily dependent on the SOC II report issued by the Service Provider. The report so furnished by the Service Provider, however, did not cover the entire period of 12 months and, accordingly, based on the said report, the auditor recorded a factual observation in the audit opinion. The Amalgamating Company hereby humbly submits that it has all the relevant control mechanisms in place as required with respect to maintenance of books of accounts, carrying out the operations of the Amalgamating Company and preparation of financial statements.

14. The contents of paragraph 20 of the Report which requires the Demerged/ Amalgamated company and Amalgamating Company to undertake to ensure the compliance with the observation made by SEBI/Stock Exchanges. It is submitted that the Demerged/ Amalgamated company and Amalgamating Company hereby undertakes to comply with the observations made by BSE in its observation letter dated 28th October, 2024 in addition to any further observations that may be issued by BSE.

15. The contents of paragraph 21 of the Report require the Demerged Company and/or Amalgamating Company to undertake to comply with the provisions of Section 232(3)(i) and Section 240 of the Companies Act, 2013. It is respectfully submitted that the right to set off under Section 232(3)(i), is a statutory right available to the Amalgamated Company, and there is no requirement for the Amalgamated Company to undertake compliance of the same. The right to set off fees payable by the Amalgamated Company can be exercised even in the absence of any such undertaking.

16. It is further submitted that liability of officers of the Demerged Company and/or Amalgamating Company prior to demerger and amalgamation, respectively, shall continue after such demerger or amalgamation by operation of law in terms of Section 240 of Companies Act, 2013. When a provision of law fastens liability on officers in default of the Transferor Companies, the question of the Demerged Company and Amalgamating Company undertaking to comply with the same does not arise. Such liability ipso facto attaches to such officers even without any such undertaking.

17. The content of paragraph 22 of the report which requires the Resulting Company 1 and Resulting Company 2 to undertake to file their respective amended Memorandum of Association (MoA) containing the amendment to capital clause for record purpose. It is submitted that the Resulting Company 1 and Resulting Company 2 hereby undertake to file the amended MoA containing amendment to respective capital clause with the Registrar of Companies.

Reply to the Official Liquidator:

3. **The Official Liquidator appointed M/s. Siv, Ram & Raj, Chartered Accountant firm, to scrutinise the books of account maintained by the Amalgamating Company and to verify whether the affairs of the Amalgamating Company have been carried out in a manner that is not prejudicial to public interest.**

14. **Further, Clause 3(a) of the Part VII of the Scheme provides that the Companies have the discretion to make any alteration(s) or modification(s) to the Scheme, subject to the approval of this Hon'ble Tribunal. Clause 3(a) of the Part VII of the Scheme is extracted below:**

> ***"3. The Companies (by their respective Boards), either by themselves or through a committee appointed by them in this behalf, may jointly and as mutually agreed in writing:***

(a) in their full and absolute discretion, assent to any alteration(s) or modification(s) to this Scheme which the NCLT may deem fit to approve or impose, and/or effect any other modification or amendment which the Boards of the Companies may jointly and mutually agree in writing, consider necessary or desirable and to do all acts, deeds and things as may be necessary, desirable or expedient for carrying the Scheme into effect;"

17. The MCA General Circular No. 09/ 2019 dated August 21, 2019 ("**MCA Circular**"), inter alia, provides that section 232(6) of the Companies Act, 2013 enables the companies in question to choose and state in the scheme an 'appointed date' and such date may be a specific calendar date or may be tied to the occurrence of an event such as fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, which are relevant to the scheme. Accordingly, in the present case, the appointed date being a future date dependent upon the occurrence of certain events, is in compliance with the provisions of the Companies Act, 2013 and is expressly permitted under the MCA Circular. Paragraph 6(d) of the MCA circular is extracted below:

"6(d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event-based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force."

21. As regards the observations in Paragraph 3(iii) of the Report, the same are unnecessary and baseless. The OL seeks the leave of this Hon'ble Tribunal to submit further report upon the appointed date being achieved. The same is unknown to law. Section 230(5) of the Companies Act, 2013 provides that the notice of scheme of arrangement along with all the relevant documents shall be sent to the office of the official liquidator. Further, it provides that the official liquidator shall provide its representation to the scheme of arrangement within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that the official liquidator has no representations on the scheme of arrangement. The Companies Act read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 does not stipulates any <u>further</u> notice to be issued to official liquidator just because the appointed date is not a specific calendar date.

24. As regards the observation in Paragraph 3(iv) of the Report, the total number of equity shares of the Fourth Petitioner Company/ Amalgamating Company, is 35,74,29,77 out of which 44,70,532 equity shares are partly paid up i.e., paid up only to the extent of Rs. 0.05 against the face value of Rs. 10.00 per share. Inadvertently, in the Scheme, the said 44,70,532 partly paid up equity shares were reflected as fully paid-up equity shares of Rs. 10 each, resulting in the paid-up share capital being stated as Rs 35,74,29,770. However, as per the records of the MCA, the correct paid-up share capital stands at Rs. 31,29,47,976. It is humbly submitted that this discrepancy arose solely on account of a typographical error in the Scheme there was never an intention to misstate the share capital. It is further submitted that, post 21.06.2024, there is no reduction of share capital of paid up equity share capital of the Fourth Petitioner Company/ Amalgamating Company.

27. As regards the observation in Paragraph 3(v) of the Report, the averment that the Clause 17.1(Transfer of CCDS) of Part II of the Scheme, which provides for the Third Petitioner Company to purchase the relevant Compulsory Convertible Debentures ("**CCD**") holders and the CCD holders shall sell to Third Petitioner Company, the outstanding CCDs which was issued by first Petitioner Company, it is prima facie a case of transfer of securities in the nature of its sale / purchase for which the compliance with section 56 of the Companies Act, 2013 (transfer of Securities) is to be made, is completely misconceived and without basis. Any scheme of arrangement is a matter of domestic concern of the respective companies that are parties to the scheme and that of their shareholders and creditors. All necessary approvals of the relevant stakeholders have already been obtained for such composite scheme of arrangement. The OL is not entitled to sit in appeal over the manner of accomplishment of the objective of the shareholders in approving the scheme which is otherwise in accordance with the law. There is no need to comply with the provisions of Section 56 of the Companies Act, 2013. The transfer of CCDs as provided in Clause 17.1 of Part II of the Scheme is not a substitute for regular securities transfer transactions between two parties through merger/arrangement between previous owner and another company. The said transfer of CCDs is included as a separate part in the Scheme only for the purpose of sequencing. However, in any event, the Petitioner Companies submit that

the First Petitioner Company i.e. Vivriti Capital Limited has neither issued nor has any outstanding compulsorily convertible debentures, and Clause 17.1 of Part II of the Scheme is merely an enabling clause. Clause 17.1 of the Scheme provides for transfer of CCDs, if any on the Record Date. Accordingly, it is unlikely that any transfer of CCDs will arise pursuant to the Scheme.

28. As regards the observation in Paragraph 3(vi) of the Report, Clause 29.3.1(ii) read with Clause 45 of Part III of the Scheme and Clause 105.3.1(iii) read with Clause 122 of Part V of the Scheme provides that Third Petitioner Company i.e., Vivriti Next Limited (instead of Resulting Company 1 or Resulting Company 2) will issue fresh employee stock options and shares to the option holders and shareholders of Petitioner Company 1 and Petitioner Company 4. Section 2(41A) of the Income Tax Act, 1961("**IT Act**"), defines Resulting Company as follows:

> *2(41A)"resulting company" means one or more companies* ***(including a wholly owned subsidiary thereof)*** *to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;* [Emphasis Supplied]

32. With respect to the observations in Paragraph 3(vii), 3(viii) and 3(xi) of the Report, the same are misconceived and irrelevant. Neither the First Petitioner Company nor the Second Petitioner Company are being wound up pursuant to the sanction of this Scheme. Accordingly, it is unclear as to why the Official Liquidator has ventured to comment upon provisions of the Scheme which neither involve nor affect the Fourth Petitioner Company/Amalgamating Company.

40. It is further submitted that as Rule 8A(1)(w) per Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**"), as amended by the Companies (Incorporation) fifth Amendment Rules, 2019 such change of name is permitted for use by group company "***in the course of compromise, arrangement and amalgamation***". Accordingly, since in the aforesaid case, the change of name is being undertaken pursuant to an arrangement in accordance with the Scheme, the same is permissible in accordance with the said rules.

44. As regard to the observations in Paragraph 3(ix) of the Report, the same are misconceived and erroneous understanding of the Scheme, the Valuation Report dated June 24, 2024 issued by SPA Valuation Advisors Private Limited, IBBI Registered Valuer *(IBBI Registration No. IBBI/RV-E/05/2021/148)* for determining the exchange ratio of shares in the Scheme is in accordance with generally accepted pricing methodology for valuation and swap was determined after considering the valuation of the First, Third and Fourth Petitioner Companies after giving impact of the respective parts of the Scheme. The Fairness Opinion dated June 26, 2024 was issued on the said valuation by Capital Square Advisors Private Limited, Category -1 SEBI Merchant Banker, *(SEBI Reg. No. INM000012219)*. It is submitted that as stated in detail in above paragraphs 17 - 23, paragraph 6 (d) of the MCA Circular enables the companies to choose and state in the scheme an 'appointed date' and such date may be tied to the occurrence of an event such as fulfilment of any preconditions agreed upon by the parties. Further, there is no provisions under the Companies Act, 2013 or any circular issued by the MCA which requires the companies to take fresh valuation as on the if the appointed date is tied to occurrence of a future event.

51. As regard to the observations in Paragraph 3(x) of the Report, the same are entirely misconceived and are wholly irrelevant. The First Petitioner Company/Amalgamated Company currently holds 69.99% of the total equity paid up share capital in Fourth Petitioner Company/Amalgamating Company. Further, the independent auditor's certificate dated June 27, 2024 issued by Sundaram and Srinivasan (charter accountants) to First Petitioner Company/ Amalgamated Company provides that the accounting treatment as provided in Clause 93 of Part IV of the Scheme is in compliance with the applicable accounting standards as prescribed in Section 133 of the Act read with Companies (Indian Accounting Standards) Rules 2015. The First Petitioner Company/Amalgamated Company and Fourth Petitioner Company/Amalgamating Company shall continue to satisfy the criteria of common control as on Appointed Date.

52. As regard to the observations in Paragraph 3(xii) of the Report, the same are entirely misconceived and are wholly irrelevant. The term "Vivriti group" used in the Clause 10 of the Scheme is not a defined term and it is not required to be defined in the Scheme, as it refers to the parties to the Scheme generally. It is submitted that the averment that the rationale is not made out clear is incorrect. Sub clauses 10(a) to 10(f) of the Scheme clearly sets out the rationale and objects of the Scheme. Further the details of compromise / arrangement at each company level, namely, (i) demerger of NBFC Business from First Petitioner Company to Second Petitioner Company; (ii) amalgamation of Fourth Petitioner Company with First Petitioner Company; and subsequent (iii) demerger of AMC Business from First Petitioner Company to Fifth Petitioner Company; are clearly set out in the Scheme.

For HARLAND COMPANY INVESTMENTS MADRAS PVT. LTD. For VIVRITI NEX

53. As regard to the observations in Paragraph 3(xiii) of the Report, the same are misconceived and erroneous. As per note 3.20 of standalone financial statement of the First Petitioner Company/Amalgamating Company/Demerged Company of the Financial Year 2023-2024, it is given that all the activities of the First Petitioner Company/Amalgamating Company/Demerged Company revolves around the main business of financing, and that First Petitioner Company/Amalgamating Company/Demerged Company does not have a separate geographic segment other than India and hence, no separate report le segment as per IND AS 108. However, as per Note 38 to the consolidated financial statements in the annual report of First Petitioner Company for the Financial Year 2023-2024, two reportable segments have been disclosed i.e. NBFC and Fund Management, which are in compliance with Companies Act, 2013 and applicable Indian Accounting Standards.

59. It is humbly submitted that in light of the above, the prayers so sought for by the OL ought not be entertained and rejected. None of the observations of the OL have any merit and are liable to be rejected by this Hon'ble Tribunal. As stated by the OL in para 4 of the Report the affairs of the Fourth Petitioner Company / Amalgamating Company is not in any manner carried out in a manner prejudicial to public interest and to the interest of the members and it is therefore humbly prayed that the present response be taken on record and the present Scheme be sanctioned by this Hon'ble Tribunal as prayed for.

Reply to the Income Tax Department:

4. I state that the Deputy Commissioner of Income Tax Corporate Circle 3(1) has at paragraph 2 of its Letter of Objections has conveyed that it has no objection to the Scheme in the following terms, '*...On perusal of the scheme of amalgamation, it is seen that the same is as per the provisions of Section 2(1B) of the Income Tax Act. Hence, there is no objection for the proposed scheme of amalgamation... (...continued).*

5. I further state that the following observation is made at paragraph 2(i) of the Letter of Objection

"2(i) In case, post amalgamation, if any information suggesting escapement of income is received by this office relating to the PAN of the Transferor Company, the Department shall initiate such proceedings for assessment of the same in the case of the transferee

company and the transferee company shall not have any objection for the same and shall pay the demand that may arise on account of such assessment proceedings."

6. I state that provisions under Clause 27 (Legal, taxation and other proceedings) of the Scheme sufficiently satisfies above observation of the Income Tax Department extracted above in relation to demerger of Demerging Undertaking 1 into Hari and Company Investments Madras Private Limited (**"Resulting Company 1"**). Clause 27.1 of the Scheme is extracted as under:

> *"**Clause 27.1**. Upon the coming into effect of this Scheme, **all legal, taxation or other proceedings**, whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal), by or against the Demerged Company and relating to the Demerged Undertaking 1, under any statute, whether pending on the Appointed Date or which may be instituted any time thereafter, **shall be continued and enforced by or against the Resulting Company 1**. The Demerged Company shall in no event be responsible or liable in relation to any such legal or other proceedings."* [Emphasis Supplied]

7. I state that provisions under Clause 103 (Legal, taxation and other proceedings) of the Scheme sufficiently satisfies above observation of the Income Tax Department extracted above in relation to demerger of Demerging Undertaking 2 into Vivriti Funds Private Limited (**"Resulting Company 2"**). Clause 103.1 of the Scheme is extracted as under:

> *"**Clause 103.1.** Upon the coming into effect of this Scheme, **all legal, taxation or other proceedings**, whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal), by or against the Demerged Company and relating to the Demerged Undertaking 2, under any statute, whether pending on the Appointed Date or which may be instituted any time thereafter, **shall be continued and enforced by or against the Resulting Company 2 after the Effective Date**. The Demerged Company shall in no event be responsible or liable in relation to any such legal or other proceedings against the Resulting Company 2 subject to applicable regulations. The Resulting Company 2 shall be added as party to such proceedings and shall prosecute or defend such proceedings in co-operation with the Demerged Company."*

9. ACCOUNTING TREATMENT

It is stated that the certificates issued by the Statutory Auditors certifying the Accounting Treatment of the petitioner companies are in compliance with Section 133 of the Companies Act, 2013 are placed on record in Page No. 400 of Volume 3.

10. VALUATION

In Part B, Clause 6 of the Scheme, it is stated that upon the Scheme becoming effective, Transferee Company shall, without any further application or deed, but subject to necessary approvals, if any, being granted, issue and allot equity shares, credited as fully paid-up, to the extent indicated below, to the shareholders of Transferor Company as on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or their successors in title, as may be recognized by the Board of Transferor Company in the following proportion on the basis of the valuation report dated 22 March 2024 issued by Spa Valuation Advisors Private Limited (Partner-----), a Registered Valuer holding Certificate of Practice No. IBBI/RV-E/05/2021/148 and approved by the Board of Transferee Company and Transferor Company:

Demerger 1: "On a fully diluted basis, 12.79 shares of face value of INR 1 each fully paid up of VNPL shall be issued to the shareholders of VCL for 1 share of face Value of INR 10 fully paid up held in VCL on a fully diluted basis for all classes of shares except Series D preference shares. For Series D CCPS in VCL, 25.43 shares on a fully diluted basis of face value of INR 1 each fully paid up of VNPL shall be issued for 1 share of face Value of INR 10 fully paid up held in VCL on a fully diluted basis."

Amalgamation: "On a fully diluted basis, 0.25 shares of face value of INR 10 each fully paid up of VCL shall 26,81,885 be issued to the shareholders of VAMPL (other than VCL), for 1 share of face Value of INR 10 fully paid up held in VAMPL on a fully diluted basis"

Demerger 2: "On a fully diluted basis, 1.36 shares of face value of INR 1 each fully paid up of VNPL shall be issued to the shareholders of VCL for 1 share of face Value of INR 10 fully paid up held in VCL on a fully diluted basis for all classes of shares except Series D preference shares. For Series D CCPS in VCL, 2.78 shares on a fully diluted basis of face value of INR 1 each fully paid up of VNPL shall be issued for 1 share of Face Value of INR 10 fully paid up held in VCL on a fully diluted basis."

10.1 Share Entitlement Ratio:

Details of the Consideration clause and share entitlement ratio in Clause 45 of the Scheme:

Demerger 1 Share Exchange Ratio: Upon the Effective Date and in consideration of the transfer and vesting of the Demerged Undertaking 1 in the Resulting Company 1 pursuant to Part III of this Scheme and consequent activities undertaken by Demerged Company post Appointed Date, for and on behalf of the Demerged Undertaking 1, VNPL shall, without any further act or deed, issue and allot to the shareholders of the Demerged Company, whose names are recorded in the register of members as a member of the Demerged Company, holding the respective class of equity/preference shares, as on the Record Date or their legal heirs, executors or administrators or (in case of a corporate entity) its successors, shares in VNPL.

Amalgamation Share Entitlement Ratio: Upon the Effective Date and in consideration of the transfer and vesting of the Amalgamating Undertaking in the Amalgamated Company pursuant to Part IV of this Scheme and consequent activities undertaken by Amalgamated Company post Appointed Date, for and on behalf of the Amalgamating Undertaking, the Amalgamated Company shall, without any further act or deed, issue and allot to the shareholders of the Amalgamating Company, other than the Amalgamated Company, whose names are recorded in the register of members as a member of the Amalgamating Company as on the Effective Date or their legal heirs, executors or administrators or (in case of a corporate entity) its successors, equity shares/ CCPS in the Amalgamated Company.

Demerger 2 Share Exchange Ratio: Upon the Effective Date and in consideration of the transfer and vesting of the Demerged Undertaking 2 in the Resulting Company 2 pursuant to Part V of this Scheme and consequent activities undertaken by Demerged Company post Appointed Date, for and on behalf of the Demerged Undertaking 2, VNPL shall, without any further act or deed, issue and allot to the shareholders of the Demerged Company, whose names are recorded in the register of members as a member of the Demerged Company, holding the respective class of equity/preference shares as on the Effective Date or their legal heirs, executors or administrators or (in case of a corporate entity) its successors, equity shares/ CCPS in VNPL.

11. OBSERVATIONS OF THIS TRIBUNAL

11.1. This Tribunal is of the view that the scheme as contemplated by the Petitioner companies seems to be *prima facie* not, in any way detrimental to the

interest of the members of the Companies. In view of the absence of any material objections from any statutory authorities and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation as well as the prayer made therein.

11.2. Notwithstanding the above, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.

11.3. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, payment is due or required in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

12. THIS TRIBUNAL DO FURTHER ORDER

(i) That all properties, rights and interests of Amalgamating Companies shall, pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Resulting Companies in terms of the Scheme.

(ii) That all the liabilities, powers, engagements, obligations and duties of the Amalgamating Companies shall pursuant to Section 232(3) of the Companies Act, 2013 without further act or deed be transferred to and vest in or be deemed to have been transferred and vested in the Resulting Companies in terms of the Scheme.

(iii) That the 'Appointed Date' for the Scheme shall be same as the Effective Date as mentioned in Clause 13(m) of the Scheme.

(iv) That the 'Effective Date' shall be defined as per the Clause 13(ff) of the scheme where it is defined that *"**Effective Date** means the date which will be the first day of the month following the month in which the last of the conditions and matters referred to in Clause 6 of Part VII have occurred or have been fulfilled or waived, as applicable in accordance with this Scheme. References in this Scheme to date of "coming into effect of the Scheme" or "effectiveness of the Scheme" shall be construed accordingly;"*

(v) That the 'Record Date' for the Scheme shall be defined as per the Clause 19 Part C of the scheme.

(vi) That all proceedings now pending by or against the Amalgamating Companies shall be continued by the Resulting Companies.

(vii) That all the employees/workmen of the Amalgamating Companies in service on the date immediately preceding the date on which the Scheme finally takes effect shall become the employees of the Resulting Companies without any break or interruption in their service with all the benefits.

(viii) That the Resulting Companies shall file the revised Memorandum and Articles of Association with the Registrar of Companies, concerned and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Resulting Companies after setting off the fees paid by the Amalgamating Companies.

(ix) That the Petitioner Companies, shall within thirty days of the date of receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Registrar of Companies shall place all documents relating to the Amalgamating Companies registered with

him on the file kept by him in relation to Resulting Companies shall be consolidated accordingly.

(x) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

13. Accordingly, the Company Petition **CP (CAA) / 37(CHE) / 2025** stands **Allowed** on the aforementioned terms and is disposed of.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)