

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, COURT NO. I  
KOLKATA**

Company Petition (CAA) No. 86/ KB /2023  
Connected with  
Company Application (CAA) No. 15/KB/2023

*A petition under Section 230 read with Section 232 of the Companies Act 2013; read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016, and other applicable provisions of law.*

**IN THE MATTER OF:**

**A Scheme of Amalgamation of (Final Motion):**

**STARTREE RETAILORS PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U74999WB2012PTC173371 and its registered office at 6/7 A AJC Bose Road Cabin 10, Kolkata -700017, West Bengal.

....Transferor Company No. 1/Petitioner Company No 1

**And**

**CRUSHCON ENGINEERS PVT LTD**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U52341WB1989PTC047420 and its registered office at 6/7 A AJC Bose Road Cabin 10 , Kolkata -700017, West Bengal.

....Transferor Company 2/ Petitioner Company No 2

**And**

**NEELKANTH COMMTRADE PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No.

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U51109WB2008PTC121617 and its registered office at 6/7 A AJC Bose Road  
Cabin 10, Kolkata 700017, West Bengal

.....Transferor Company 3/ Petitioner Company No 3

**And**

**SHIVAKAMINI SALES PRIVATE LIMITED**, a company incorporated under the  
Companies Act, 1956 and being a Company within the meaning of the Companies  
Act, 2013 having Corporate Identification No. U74900WB2010PTC140829 and its  
registered office at 9, A J C Bose Road 1st Floor Kolkata 700017, West Bengal.

.....Transferor Company 4/ Petitioner Company No 4

**And**

**SARV STEELS PRIVATE LIMITED**, a company incorporated under the  
Companies Act, 1956 and being a Company within the meaning of the Companies  
Act, 2013 having Corporate Identification No. U27109WB2005PTC105844 and its  
registered office at 60, Theatre Road, 2nd Floor, Kolkata 700017, West Bengal.

.....Transferor Company 5/ Petitioner Company No 5

**And**

**CORRUGATED CONTAINERS PAPER TRADING PRIVATE LIMITED**, a  
company incorporated under the Companies Act, 1956 and being a Company within  
the meaning of the Companies Act, 2013 having Corporate Identification No.  
U51909WB2002PTC094575 and its registered office at Jain Center, 34A Metcalfe  
Street Room No.8D, Kolkata-700013, West Bengal.

.....Transferor Company 6/ Petitioner Company No 6

**And**

**MAHADEB COMMERCIALS PVT LTD**, a company incorporated under the  
Companies Act, 1956 and being a Company within the meaning of the Companies

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Act, 2013 having Corporate Identification No. U51909WB2006PTC107427 and its registered office at 60, Theatre Road, 2nd Floor, Kolkata 700017, West Bengal.

.....Transferor Company 7/ Petitioner Company No 7

**And**

**TOPLINE VANIJYA PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U51909WB2009PTC136238 and its registered office at 6/7 A AJC Bose Road Cabin 10 , Kolkata -700017, West Bengal.

.....Transferor Company 8/ Petitioner Company No 8

**And**

**AGGRATI VINIMAY PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U36999WB2006PTC109051 and its registered office at A Ply Ghar, 181/1, Nagendra Nath Road, Shop 8, Kolkata-700028, West Bengal.

.....Transferor Company 9/ Petitioner Company No 9

**And**

**ANANDAMOYEE VANIJYA PRIVATE LIMITED**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having Corporate Identification No. U51109WB2008PTC121356 and its registered office at 39 Shakespeare Sarani Premlata, 6th Floor Kolkata-700017.

.....Transferee Company / Petitioner Company No 10

**And**

**IN THE MATTER OF:**

1. Startree Retailors Private Limited.

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2. Crushcon Engineers Pvt Ltd
3. Neelkanth Commtrade Private Limited
4. Shivakamini Sales Private Limited
5. Sarv Steels Private Limited
6. Corrugated Containers Paper Trading Private Limited.
7. Mahadeb Commercials Pvt Ltd
8. Topline Vanijya Private Limited.
9. Aggrati Vinimay Private Limited
- 10. Anandamoyee Vanijya Private Limited**

. . . . . Petitioners

**Date of pronouncing the order:10.07.2024.**

**CORAM:**

**Bidisha Banerjee**

**: Hon'ble Member (Judicial)**

**Balraj Joshi**

**: Hon'ble Member (Technical)**

**Ld. Counsels/Professional on Record appeared Physically/through Video**

**Conference:**

Ms. Neha Somani, Practicing Company Secretary - For the Petitioners

Mr. Alok Tandon, Joint Director, Office of the Regional Director (Eastern Region),  
MCA

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court is congregated through hybrid mode.
2. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 ("Act") sanctioning the **SCHEME OF AMALGAMATION of Startree Retailors Private Limited**, being the Petitioner No.1

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abovenamed ("**Transferor Company 1**" or "**Petitioner No.1**") , **Crushcon Engineers Pvt Ltd**, being the Petitioner No.2 abovenamed ("**Transferor Company 2**" or "**Petitioner No.2**"), **Neelkanth Commtrade Private Limited**, being the Petitioner No. 3 abovenamed ("**Transferor Company 3**" or "**Petitioner No. 3**"), **Shivakamini Sales Private Limited**, being the Petitioner No. 4 abovenamed ("**Transferor Company 4**" or "**Petitioner No. 4**"), **Sarv Steels Private Limited**, being the Petitioner No. 5 abovenamed ("**Transferor Company 5**" or "**Petitioner No. 5**"), **Corrugated Containers Paper Trading Private Limited**, being the Petitioner No. 6 abovenamed ("**Transferor Company 6**" or "**Petitioner No. 6**"), **Mahadeb Commercials Pvt Ltd**, being the Petitioner No. 7 abovenamed ("**Transferor Company 7**" or "**Petitioner No. 7**"), **Topline Vanijya Private Limited**,, being the Petitioner No. 8 abovenamed ("**Transferor Company 8**" or "**Petitioner No. 8**"), **Aggrati Vinimay Private Limited**, being the Petitioner No. 9 abovenamed ("**Transferor Company 9**" or "**Petitioner No. 9**") with **Anandamoyee Vanijya Private Limited**, being the Petitioner No. 10 abovenamed ("**Transferee Company**" or "**Petitioner No. 10**")whereby and whereunder the Transferor Companies is proposed to be amalgamated with the Transferee Company from the **Appointed Date, that is 1<sup>st</sup> April, 2022** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation ("**Scheme**").

**Details of the Petitioner companies as follows:**

SN	NAME OF THE COMPANY	COMPANY AS PER THE SCHEME	PARTY TYPE	RELEVANT ANNEXURE, PAGE NO. AND VOLUME OF THE COMPANY PETITION
<b>Appointed Date: 1<sup>st</sup> April, 2022</b>				
I.	STARTREE	Transferor	Petitioner	<b>Scheme of</b>

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	RETAILORS PRIVATE LIMITED	Company No. 1	No. 1	<b>Amalgamation</b> is annexed to the Company Petition being <b>Annexure No. – A in Volume I at Page No. 106 - 139</b>
II.	CRUSHCON ENGINEERS PVT LTD	Transferor Company No. 2	Petitioner No. 2	
III.	NEELKANTH COMMTRADE PRIVATE LIMITED	Transferor Company No. 3	Petitioner No. 3	
IV.	SHIVAKAMINI SALES PRIVATE LIMITED	Transferor Company No. 4	Petitioner No. 4	
V.	SARV STEELS PRIVATE LIMITED	Transferor Company No. 5	Petitioner No. 5	
VI.	CORRUGATED CONTAINERS PAPER TRADING PRIVATE LIMITED	Transferor Company No. 6	Petitioner No. 6	
VII.	MAHADEB COMMERCIALS PVT LTD	Transferor Company No. 7	Petitioner No. 7	
VIII.	TOPLINE VANIJYA PRIVATE LIMITED	Transferor Company No. 8	Petitioner No. 8	
IX	AGGRATI VINIMAY PRIVATE LIMITED	Transferor Company No. 9	Petitioner No. 9	

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X	ANANDAMOYEE VANIJYA PRIVATE LIMITED	Transferee Company	Petitioner No. 10	
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3. The Petition has now come up for final hearing. The Ld. Authorized Representative for the Petitioners submits as follows:-

(a) The Scheme was approved by the respective Board of Directors of all the Petitioner Companies at their meetings held on 18<sup>th</sup> November, 2022 respectively.

(b) The circumstances which justify and have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-

- i. In order to consolidate the various holding's into one vehicle and effectively manage the group companies as a single entity, which will provide several benefits including streamlined group structure by reducing the number of legal entities, reducing the multiplicity of legal & regulatory compliances, rationalizing costs, it is intended that the Transferor Companies be amalgamated into Transferee Company.
- ii. Greater size, scale, integration and greater financial strength and flexibility for the Transferee entity which would in turn, result in maximizing overall shareholder value.
- iii. The amalgamation will result in better economic control, increased financial strength and flexibility and enhance the ability of the Transferee entity to undertake large projects, thereby contributing to enhancement of future business potential.
- iv. The proposed merger will further lead to reduction in the number of entities and thereby cause reduction in overheads and costs

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- (c) The Statutory Auditor of the Petitioner No.10 i.e. Transferee Company has by their certificate dated 17<sup>th</sup> November 2022 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
- (e) The exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Ms. Vidhi Chandak, Registered Valuer.
- (f) The shares of the Petitioner Companies are **not listed** on any **stock exchange**.
- (g) By an order dated 27<sup>th</sup> April, 2023 in Company Application (CAA) No. 15/KB/2023, this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-
- (a) Meetings dispensed: Meetings of the Equity Shareholders and meetings of the Unsecured Creditors of all the Petitioner Companies are dispensed with under Section 230 (1) read with Section 232 (1) of the Act.
- (h) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 11.07.2023 the instant petition was admitted by this Tribunal and fixed for hearing on 04.08.2023 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated 11.07.2023 the Petitioners have duly served such notices by on the Central Government through Regional Director, Eastern Region; Registrar of Companies, West Bengal; on Official Liquidator; and Income Tax Department by hand delivery 17<sup>th</sup> July 2023. The notices along with documents were also sent through email to the Authorities on 17<sup>th</sup> July 2023 and have also published such



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advertisements once each in the “**Business Standard**” and “**Aajkaal**” in their issue dated 19.07.2023. An **affidavit of compliance** in this regard has also been filed by them on 29.07.2023.

SN	REGULATORY AUTHORITIES	DATE OF SERVICE	RELEVANT ANNEXURE OF THE AFFIDAVIT OF SERVICE	RELEVANT PAGE NO. OF THE AFFIDAVIT OF SERVICE
<b>BY HAND DELIVERY (THROUGH SPECIAL MESSENGER)</b>				
1.	Regional Director (ER) MCA Kolkata	17.07.2023	A	1 & 2
2.	Registrar of Companies	17.07.2023	A	4 & 5
3.	Income Tax Authorities	17.07.2023	A	7,8,9,11,12,13,15,16,17,19, 20, 21,23,24,25,27,28,29,31,32, 33, 35,36,37
4.	Official Liquidator	17.07.2023	A	39,40
<b>THROUGH E-MAIL</b>				
1.	Regional Director (ER) MCA Kolkata	17.07.2023	A	3

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2.	Registrar of Companies	17.07.2023	A	6
3.	Income Tax Authorities	17.07.2023	A	10,14,18,22,26,30,34,38
4.	Official Liquidator	17.07.2023	A	41
<b>NEWSPAPER PUBLICATION</b>				
1.	Business Standard	19.07.2023	B	43
2.	Aajkaal	19.07.2023	B	42

(i) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners Companies. The Scheme has been made bona fide and is in the interest of all concerned.

4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), have filed their representations before this Tribunal.
5. The Official Liquidator has filed his report dated 2<sup>nd</sup> August, 2023 and concluded as under:-

*9. That the Official Liquidator on the basis of information submitted by the Transferor Companies is of the view that the affairs of the aforesaid Transferor Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the erstwhile Companies Act, 1956/the Companies Act, 2013, whichever is applicable.*

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*10. That in view of the submission made above, the Hon'ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.*

6. The RD has filed his reply affidavit dated 02.08.2023 (“**RD affidavit**”) which has been dealt with by the Petitioners by their Rejoinder affidavit dated 29.08.2023 (“**Rejoinder**”). The observations of the RD and responses of the Petitioners are summarized as under:-

**Paragraph 2(a) of RD Affidavit:**

*That it is submitted that as per available record, it appears that no complaint and/or representation has been received against the proposed Scheme of Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year ended 31/03/2022.*

**Paragraph 3 of Rejoinder:**

That it is submitted that as per available record, of the said affidavit, we humbly say that the statements contained therein, are affirmations and submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

**Paragraph 2(b) of RD Affidavit:**

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
70,96,92,796/-	70,45,57,785/-( <i>Non-current Investments and Long-Term Loans &amp; Advances</i> )	1,59,58,810/-	1,59,33,810/-( <i>Interest Income</i> )

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*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provisions of section 230(2)(a) of the Companies Act 2013.*

**Paragraph 4 of Rejoinder of Crushcon Engineers Pvt Ltd:**

With reference to paragraph 2(b) of the said affidavit, it is submitted that the Crushcon Engineers Pvt Ltd (“Transferor Company 2”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 2 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 2 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 2 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 2 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

**Paragraph 2(c) of RD Affidavit:**

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*The Transferor Company, Neelkanth Commtrade Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India. The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows:-*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
54,25,36,054/-	54,08,53,227/- (Non-current Investments and Long-Term Loans & Advances)	59,63,039/-	59,62,800/- (Interest Income)

*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provisions of section 230(2)(a) of the Companies Act 2013.*

**Paragraph 5 of Rejoinder of Neelkanth Commtrade Private Limited:**

With reference to paragraph 2(c) of the said affidavit, it is submitted that the Neelkanth Commtrade Private Limited (“Transferor Company 3”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section

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230(2)(a) have not been complied with. I state that the Transferor Company 3 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 3 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 3 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 3 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

**Paragraph 2(d) of RD Affidavit:**

*The Transferor Company, Sarv Steels Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India. The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows:*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
85,41,40,000/-	74,01,70,000/- (Long-Term Loans & Advances to Body Corporates)	3,08,24,000/-	3,07,99,000/- (Interest Received)

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*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company y is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provisions of section 230(2)(a) of the Companies Act 2013.*

**Paragraph 5 of Rejoinder of Sarv Steels Private Limited:**

With reference to paragraph 2(e) of the said affidavit, it is submitted that the Sarv Steels Private Limited (“Transferor Company 5”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 5 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 5 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 5 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 5 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 451A of the Reserve Bank of India Act 1934.

**Paragraph 2(e) of RD Affidavit:**

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*The Transferor Company M/s Sarv Steels Private Limited in its Financial Statement as at 31.03.2022 has reported Non-current Investments Investment in Equity Instruments for Rs.8541.40 lakhs which is one of the major assets having material in magnitude of the Company. But no disclosure was made about the nature and extent of such investment in each investee company although such disclosure is statutorily required under schedule III of the Companies Act 2013 read with section 129(1) of the said Act. In absence of the relevant details regarding the Investments of the company, which has a relevance to the scheme, this deponent is not in a position to prepare comprehensive representation of the details of the said assets of the transferor company which is of material magnitude. The company may also file the revised financial statements.*

**Paragraph 6 of Rejoinder of Sarv Steels Private Limited:**

With reference to paragraph 2(e) of the said affidavit, it is submitted that the Transferor Company 5 has prepared its financial statements in accordance with the provisions of the Companies Act and Schedule III thereunder. I state that the details of investments held by Transferor Company 5 in unquoted equity shares for the Financial Year 2021-22 were duly disclosed in the audited financial statement for the financial year 2021-22 but were inadvertently missed to be attached to the e-form AOC 4 while filing the financial statements for the financial year 2021-22. The Transferor Company 5 has duly filed the said details in Form GNL 2 with the office of the Registrar of Companies on 22<sup>nd</sup> August 2023 vide SRN AA4285432. It may also be relevant to note that even if such venial omission is considered an offence, it is only the directors of the Transferor company and not the Transferor company itself, which shall be liable for such alleged violation of Section 129 of the Act. I further state that such inadvertent omission will not impair the truth and fairness of the financial statements and will not impact the proposed Scheme of Amalgamation (“Scheme”) in any manner.

**Paragraph 2(f) of RD Affidavit:**



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*The Transferor Company, M/s Sarv Steels Private Limited, has shown in its Financial Statement as at 31/03/2022, under head Long Term Loans & Advances - Loans and Advances to Body Corporates for Rs.7401.70 lakhs which is a major asset of the Company. However, no further disclosure regarding specification or details thereof were furnished contrary to the requirements of schedule III to the Companies Act 2013 read with section 129 of the said Act. The financial statement therefore violates the provisions of the Companies Act 2013 and lacks transparencies impacting the scheme. No application for compounding the said offence has been also received from the officers in default of the company. Hon'ble Tribunal may direct the Petitioner Company to file compounding application under section 441 of the Companies Act 2013 to get the offence compounded after making good in the matter.*

**Paragraph 7 of Rejoinder of Sarv Steels Private Limited:**

With reference to paragraph 2(f) of the said affidavit, it is submitted that the necessary disclosures in relation to Long Term Loans and Advances has been duly made in accordance with Schedule III of the Companies Act, 2013 by the Transferor Company 5 in the Financial statement for F.Y. 2021-22. I deny that specifications or details were not disclosed contrary to the requirements of Schedule III read with Section 129 of the Companies Act, 2013. I further state that assuming though not admitting that even if such lapse has occurred it is venial in nature and shall not impact the proposed Scheme in any manner. It may also be relevant to note that even if such venial omission is considered an offence, it is only the directors of the Transferor company and not the Transferor company itself, which shall be liable for such alleged violation of Section 129 of the Act. I enclose the relevant extract of financial statement for the financial year 2021-22 wherein the required disclosures have been made and mark it as Annexure A, and reiterate that the Transferor Company 5 has prepared its financial statements in accordance with the provisions of the Companies Act and Schedule III thereunder.

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**Paragraph 2(g) of RD Affidavit:**

*The Transferor Company, Corrugated Containers Paper Trading Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India. The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows:-*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
<i>35,10,35,510/-</i>	<i>34,36,83,830 (Long-Term Loans &amp; Advances)</i>	<i>2,84,54,000</i>	<i>2,84,29,000 (Interest Received)</i>

*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact the provisions of section 230(2)(a) of the Companies Act 2013.*

**Para 5 of Rejoinder of Corrugated Containers Paper Trading Private Limited:**

With regard to Para 2(g) of the said affidavit, I humbly submit that Corrugated Containers Paper Trading Private Limited (“Transferor Company 6”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I

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deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 6 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 6 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 6 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 6 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

**Paragraph 2(h) of RD Affidavit :**

*The Transferor Company, Corrugated Containers Paper Trading Private Limited in its Financial Statements as at 31/03/2022, Long Term Borrowing of Rs.61.7790 has been reported. But no form DPT-3 has been filed by the company in this regard violating Rule 16 of the Companies (Acceptance of Deposit) Rules 2014. The default should be immediately made good by the company as otherwise the statutory violation shall continue with the company taking advantage of the merger and become free from filing the pending form.*

**Para 6 of Rejoinder of Corrugated Containers Paper Trading Private Limited:**

With further reference to para 2(h) of the said affidavit in respect of the observations made by the Learned Regional Director in relation to the non-filing of DPT-3 by the Transferor Company 6, I humbly submit that the Transferor Company 6 have duly complied with the provisions of Rule 16 of Companies (Acceptance of Deposit) Rules,

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2014 and have duly filed e-form DPT-3 with the office of the Registrar of Companies on 07<sup>th</sup> August 2023 vide SRN AA4022355 by paying requisite fees

**Paragraph 2(i) of RD Affidavit:**

*The Transferor Company, Mahadeb Commercials Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India. The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
<i>50,61,62,000/-</i>	<i>49,17,30,000/- (Long-Term Loans &amp; Advances)</i>	<i>2,62,20,000/-</i>	<i>2,61,95,000- (Interest Income)</i>

*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 451A of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 451A of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provision of section 230 (a) of the Companies Act, 2013.*

**Paragraph 5 of Rejoinder of Mahadeb Commercials Private Limited:**

With further reference to para 2(i) of the said affidavit, I humbly submit that Mahadeb Commercials Pvt Ltd (“Transferor Company 7”) is not a Non Banking

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Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 7 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 7 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 7 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 7 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

**Paragraph 2(j) of RD affidavit**

*The Transferor Company, M/s Mahadeb Commercials Private Limited, has shown in its Financial Statement at 31/03/2022, under head Long Term Loans & Advances - Long Term Loans and Advances from others for Rs.4917 30 lakhs, which is a major asset of the Company However, no further disclosure regarding specification or details thereof were furnished contrary to the requirements of schedule III to the Companies Act 2013 read with section 129 of the said Act. The financial statement therefore violates the provisions of the Companies Act 2013 and lacks transparencies impacting the scheme. No application for compounding the said offence has been also received from the officers in default of the company Hon'ble Tribunal may direct the Petitioner Company to file compounding application under section 441 of the Companies Act 2013 to get the offence compounded after making good in the matter.*

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**Paragraph 6 of Rejoinder of Mahadeb Commercials Private Limited::**

With further reference to para 2(i) of the said affidavit submitted that the necessary disclosures in relation to Long Term Loans and Advances has been duly made in accordance with Schedule III of the Companies Act 2013 by the Transferor Company 7 in the Financial statement for F.Y. 2021-22. I deny that specifications or details were not disclosed contrary to the requirements of Schedule III read with Section 129 of the Companies Act, 2013. I further state that assuming though not admitting that even if such lapse has occurred it is venial in nature and shall not impact the proposed scheme in any manner. It may also be relevant to note that even if such venial omission is considered an offence, it is only the directors of the Transferor company and not the Transferor company itself, which shall be liable for such alleged violation of Section 129 of the Act. I enclose the relevant extract of financial statement for the financial year 2021-22 wherein the required disclosures have been made and reiterate that the Transferor Company 7 has prepared its financial statements in accordance with the provisions of the Companies Act and Schedule III thereunder.

**Paragraph 2 (k) of RD Affidavit**

*The Transferor Company, Topline Vanijya Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India. The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows:-*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
<i>67,83,02,000/-</i>	<i>66,86,22,000/- (Long-Term Loans &amp; Advances)</i>	<i>1,92,11,000/-</i>	<i>1,91,86,000/- (Interest Income)</i>

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*Therefore, it is clear that more than 50% of its total assets were financial assets and more than 50% of its total income was financial income. The company is NBFC but functioning without Registration Certificate from the Reserve Bank of India under section 45IA of the Reserve Bank of India Act 1934 as it appears since the Auditor has misleadingly reported that the company does not require to get registered under section 45IA of the Reserve Bank of India Act 1934. The said material fact has not been also disclosed in the scheme, contrary to the provisions of section 230(2)(a) of the Companies Act 2013.*

**Paragraph 5 of Rejoinder of Topline Vanijya Private Limited:**

With further reference to para 2(k) of the said affidavit submitted that Topline Vanijya Private Limited (“Transferor Company 8”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 8 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 8 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 8 does not trade in its investments and has not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 8 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

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**Paragraph 2 (I) of RD Affidavit**

*The Transferor Company, Aggrati Vinimay Private Limited is basically a Non-Banking Financing Company operating as such without necessary registration from the Reserve Bank of India The position of assets and income of the company as shown in the financial statement for 2021-22 were as follows:-*

<i>Total Assets (Rs)</i>	<i>Financial Assets (Rs)</i>	<i>Total Income (Rs)</i>	<i>Financial Income (Rs)</i>
32,57,92,687/-	32,20,15,862/-  <i>((Non-current Investments and Long-Term Loans &amp; Advances)</i>	92,40,538/-	92,15,538/-  <i>( Interest Income)</i>

**Paragraph 5 of Rejoinder of Aggrati Vinimay Private Limited:**

With further reference to para 2(k) of the said affidavit submitted that AggratiVinimay Private Limited (“Transferor Company 9”) is not a Non Banking Financial Company requiring registration with the Reserve Bank of India. I deny that any material fact has not been disclosed or the provisions of Section 230(2)(a) have not been complied with. I state that the Transferor Company 9 is a Company belonging to the Rashmi Group and its entire shareholding is held by companies belonging to the Rashmi Group. I further state that the Transferor Company 9 is a Core Investment Company in terms of Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016. It has invested more than 90% of its net Assets in the form of either investments or loans to Group Companies and out of which, its Investments in group companies constitute more than 60% of its net assets. I further state that the Transferor Company 9 does not trade in its investments and has



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not carried out any other financial activity referred to in Section 45I(c) and 45I(f) of the Reserve Bank of India Act, 1934. As such, the Transferor Company 9 is a Core Investment Company and does not require any Registration with the Reserve Bank of India. Accordingly, the Auditor of the company in its Audit Report has also stated that the company is not required to be registered under Section 45IA of the Reserve Bank of India Act 1934.

**Paragraph 2 (m) of RD Affidavit**

*The Petitioner Companies should be directed to provide list/details of Assets, if any, to be transferred from the Transferor Companies to the Transferee Company upon sanctioning of the proposed Scheme*

**Paragraph 5 of Rejoinder:**

With regard to para 2(m) of the said affidavit it is submitted that the list / details of assets of the Transferor Companies to be transferred to Transferee Company upon sanctioning of the proposed scheme and shall be submitted before the Hon'ble National Company Law Tribunal ("NCLT") within the period of 30 days of the receipt of the certified copy of the final order.

**Paragraph 2 (n) of RD Affidavit**

*That the Petitioner Company should undertake of company with the provisions of section 232(3) (i) of the Companies Act, 2013 through appropriate affirmation*

**Paragraph 6 of Rejoinder:**

With regard to para 2(n) of the said affidavit I humbly submit that the Petitioner Company shall comply with the provisions of section 232(3)(i) of the Companies Act, 2013. Upon the Scheme becoming effective, the authorised share capital of the Transferor Companies shall get merged with that of Transferee Company and the fee, if any, paid by the Transferor Companies on its authorised capital shall be set-off against any fees payable by the Transferee Company on its authorised capital

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subsequent to the amalgamation. Further, I humbly submit that the additional fees if any payable for the increase in authorized share capital of the Company post set-off shall be duly paid by Transferee Company upon the Scheme becoming effective.

**Paragraph 2 (o) of RD Affidavit**

*That the Transferee Company should be directed, to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.*

**Paragraph 7 of Rejoinder:**

With regard to para 2(o) of the said affidavit, in relation to the observations made by the Learned Regional Director in relation to the payment of stamp duty on the transfer of immovable properties from the Transferor Companies (if any) to the Transferee Company, I humbly submit that the Stamp duty, if any, payable on the transfer of immovable property pursuant to the Scheme shall be duly paid by Transferee Company upon the Scheme becoming effective.

**Paragraph 2 (p) of RD Affidavit**

*The Hon'ble Tribunal may kindly direct the Petitioners file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.*

**Paragraph 8 of Rejoinder:**

With further reference to para 2(p) of the said affidavit in respect of the observations made by the Learned Regional Director, I humbly submit that the Scheme as enclosed with the Company Application and the Scheme as enclosed with the Company Petition are one and same and that there is no discrepancy or changes in the Scheme enclosed with the Company Application vis-a-vis the Scheme enclosed with the Company Petition.

**Paragraph 2 (q) of RD Affidavit**

*It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi,*

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*a copy of the scheme was forwarded to the Income Tax Department on 29/05/2023 for their views/observation in the matter. However, no such views/observation in the matter from the Income Tax Department has been received yet Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

**Paragraph 9 of Rejoinder:**

With regard to statements in Paragraph 2(q) of the said affidavit, we humbly say that the statements contained therein, are submissions by the respondent to this Hon'ble Tribunal and do not require any reply on the same.

7. Heard submissions made by the Ld. Authorised Representative appearing for the Petitioner. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-
- A. The **SCHEME OF AMALGAMATION** being **Annexure "A"**, is hereby sanctioned by this Tribunal from the Appointed Date being **1<sup>st</sup> April, 2022** **Startree Retailors Private Limited**, being the Petitioner No.1 abovenamed ("**Transferor Company 1**" or "**Petitioner No.1**") , **Crushcon Engineers Pvt Ltd**, being the Petitioner No.2 abovenamed ("**Transferor Company 2**" or "**Petitioner No.2**"), **Neelkanth Commtrade Private Limited**, being the Petitioner No. 3 abovenamed ("**Transferor Company 3**" or "**Petitioner No. 3**"),**Shivakamini Sales Private Limited**, being the Petitioner No. 4 abovenamed ("**Transferor Company 4**" or "**Petitioner No. 4**"), **Sarv Steels Private Limited**, being the Petitioner No. 5 abovenamed ("**Transferor Company 5**" or "**Petitioner No. 5**"), **Corrugated Containers Paper Trading Private Limited**, being the Petitioner No. 6 abovenamed ("**Transferor Company 6**" or "**Petitioner No. 6**"), **Mahadeb Commercials Pvt Ltd**, being the Petitioner No. 7 abovenamed ("**Transferor Company 7**" or "**Petitioner No. 7**"), **Topline Vanijya Private Limited**,, being the Petitioner No. 8 abovenamed ("**Transferor Company 8**" or "**Petitioner No. 8**"), **AggratiVinimay Private Limited**, being the Petitioner No.

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9 abovenamed (“**Transferor Company 9**” or “**Petitioner No. 9**”) with **Anandamoyee Vanijya Private Limited**, being the Petitioner No. 10 abovenamed (“**Transferee Company**” or “**Petitioner No. 10**”) and shall be binding on all the Equity Shareholders of the Petitioner Companies and all concerned;

TRANSFEROR COMPANIES	TRANSFEREE COMPANY
Appointed Date :1 <sup>st</sup> April 2022	
STARTREE RETAILORS PRIVATE LIMITED	ANANDAMOYEE VANIJYA PRIVATE LIMITED
CRUSHCON ENGINEERS PVT LTD	
NEELKANTH COMMTRADE PRIVATE LIMITED	
SHIVAKAMINI SALES PRIVATE LIMITED	
SARV STEELS PRIVATE LIMITED	
CORRUGATED CONTAINERS PAPER TRADING PRIVATE LIMITED	
MAHADEB COMMERCIALS PVT LTD	
TOPLINE VANIJYA PRIVATE LIMITED	
AGGRATI VINIMAY PRIVATE LIMITED	

- B. All the property, rights and powers of the Transferor Companies, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without any further act or deed, to the Transferee Company. and, accordingly,

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the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in the Transferee Company for all the estate and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same, as provided in the Scheme;

- C. All the debts, liabilities and duties and obligations of the Transferor Companies to be transferred from the said Appointed Date, without further act or deed, to Transferee Company and shall, the same shall pursuant to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company;
- D. All the workmen and employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme. All the obligations/ liabilities of the Transferor Companies with regard to their workmen and employees shall be the responsibilities of the Transferee Company;
- F. All proceedings and/or suit and appeals now pending by or against the Transferor Companies shall be continued by or against Transferee Company, as provided in the Scheme, and the sanctioning of the scheme by this tribunal shall not come in the way of any proceedings pending/ contemplated against any of the petitioner companies, for which the relevant records shall be preserved by the Transferee company who is any way responsible for attending to any such proceedings on behalf of the constituent companies and for which the Transferee company shall preserve the necessary records of the Transferor companies as required under section 239 of the Companies act.
- G. With effect from the Appointed Date and up to and including the Effective Date, all legal, arbitration, and tax assessment proceedings/appeals of whatsoever nature by or against the Transferor Companies pending and/or arising on or after the Appointed Date shall be continued and/or enforced by or against the Transferee Company. Any compounding/penalties/liabilities/taxes required to be

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done on behalf of the Transferor Companies for any violation of the Companies' Act shall be the responsibility of the Transferee Company. The Transferee Company shall also preserve the necessary records in respect of any such pending proceedings, at least till the culmination of such proceedings.

- H. The Transferee Company shall issue and allot shares to the shareholders of the Transferor Companies, the shares in the Transferee Company in accordance with the Scheme:
- I. Upon the Scheme being effective, the Transferor Companies shall stand dissolved without winding up:
- J. Leave is granted to the petitioners to file the Schedule of Assets of the Transferor Companies in the form as prescribed in the Schedule to Form No. CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date the order. A similar schedule shall also be furnished in respect of the liabilities of the transferor companies that are being transferred to the Transferee company.
- K. The petitioner company shall serve a copy of this order on the Jurisdictional RBI office for furtherance.
- L. The Petitioners do each within thirty days of the date of the receipt of this order. cause a certified copy to be delivered to the Registrar of Companies for registration. This date shall be the Effective date of the scheme and the issue of compliances by way of any compounding applications that may be required as per law shall be made before RoC at the time of filing INC 28.
- M. After dissolution of the Transferor Companies, the fee paid by the Transferor Companies on their Authorized Share Capital to be set off against the fee payable by the Transferee Company on its authorised share capital subsequent to the amalgamation;

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- N. Any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
8. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the Registry and the Registry will append such printout, upon verification to the certified copy of the order.
9. Hence, the Company Petition (CAA) No.86/KB/2023 connected with Company Application (CAA) No. 15/KB/2023 is **disposed of** accordingly.
10. Certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

This order signed on 10<sup>th</sup> Day of July, 2024.

BD