

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

Company Petition CP(CAA) NO 78 / KB / 2023
Connected With
Company Application CA (CAA) No. 11/ KB /2023

Petition under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Amalgamation of (Second Motion):

KALKUT MARKETING PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN:U51909WB2009PTC131716) and having its Registered Office at 9, JamesHicky Sarani, Saraf Bhawan, 2nd Floor, Kolkata - 700069 in the State of West Bengal .

***** Transferor Company / Petitioner No 1

And

In the matter of:

SHREE BAHUBALI CORPORATION LIMITED, a company incorporated under the provisions of the Companies Act,1956(CIN: U51109WB1997PLC083433) and having its Registered Office at 9, James Hicky Sarani, 2nd Floor, Kolkata - 700069in the State of West Bengal.

***** Transferee Company / Petitioner No 2

And

In the matter of:

1. KALKUT MARKETING PRIVATE LIMITED
2. SHREE BAHUBALI CORPORATION LIMITED

.... Petitioners.

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Date of pronouncing the order:10/07/2024

Coram:

Bidisha Banerjee : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

(Appearance Via Video Conferencing)

For the Petitioners : 1. Ms. Manju Bhuteria, Advocate
2. Ms Aisha Amin, Advocate
3. Ms. Radhika Patodia, ACA

For the Regional Director, (ER), MCA : Mr. Alok Tandon, JD(ER), MCA

ORDER

Per: Balraj Joshi, Member (Technical)

1. The instant Company Petition has been filed in the second stage of the proceedings under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction and confirmation of the **Scheme of Amalgamation** of Kalkut Marketing Private Limited Transferor Company / Petitioner No.1, with Shree Bahubali Corporation Limited –Transferee Company/ Petitioner No. 2 from the **Appointed Date, 01st April,2022** in the manner and on the terms and conditions stated in the said **Scheme of Amalgamation**(“Scheme”). A copy of the said Scheme is annexed to the Company Petition marked – **Annexure – A** in VOL I at page No 29 to 57.
2. It is submitted by Ld. counsel appearing for the Petitioner(s) that as per the Scheme the **Appointed Date is 01st April, 2022**.
3. It is submitted by Ld. counsel appearing for the Petitioner(s) that the **Transferee Company / Petitioner No 2** is a **NBFC Company** duly registered with Reserve

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Bank of India and is holding a valid Certificate of Registration issued by the said Bank.

4. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Equity Shareholders of the Petitioner Companies as on 15TH November, 2022 duly certified by the statutory auditors of the Company all of which are collectively annexed to the Company Petition marked – **Annexure – F** in VOL II at Page No 216 to 218.
5. It is submitted by Ld. counsel appearing for the Petitioner(s) that as on 15TH November, 2022 the Petitioner No1 had NIL Secured Creditors which is duly certified by the statutory auditors of the Company and the same is annexed to the Company Petition marked – **Annexure – G** in VOL II at Page No 219.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Secured Creditors of the Petitioner No 2 as on 15th November, 2022 duly certified by the statutory auditors of the Company is annexed to the Company Petition marked – **Annexure – G** in VOL II at Page No 220.
7. It is submitted by Ld. counsel appearing for the Petitioner(s) that the list of Unsecured Creditors of the Petitioner Companies as on 15th November, 2022 duly certified by the statutory auditors of the Company all of which are collectively annexed to the Company Petition marked – **Annexure – G** in VOL II at Page No 219 to 221.
8. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Valuation Report dated 03-11-2022 recommending the Swap Ratio has been prepared by Mukesh Banka, IBBI Registered Valuer. A copy of the said Valuation Report is annexed to the Company Petition marked – **Annexure – I** in VOL II at page No 227 to 238.
9. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Board of Directors of the Petitioner Companies have passed resolution at the meeting held on 07th November, 2022 approving the Scheme of Amalgamation. A copy of the

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said Valuation Report is annexed to the Company Petition marked – **Annexure – J** in VOL II at page No 239 to 240.

10. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Statutory Auditors of the Petitioner Companies have by their certificate dated 16th November,2022 have confirmed that the accounting treatment mentioned in the Scheme is in conformity with Accounting Standard prescribed under Section 133 of the Companies Act ,2013 and Rules made there under. Copy of the said certificates are all annexed to the Company Petition being –**Annexure – K** in VOL II at Page No 241 to 244.
11. It is submitted by Ld. counsel appearing for the Petitioner(s) that, there are no proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
12. It is submitted by Ld. counsel appearing for the Petitioner(s) that, the Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:-
 - (a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
 - a. The TRANSFEREE COMPANY is a Non-Banking Finance Company duly registered with the Reserve Bank of India and is engaged in Investing and Financing activities. The TRANSFEROR COMPANY have made deployment of its funds in other investable instruments. The business of the TRANSFEROR COMPANY and the TRANSFEREE COMPANY can be combined/ adjusted and carried forward conveniently with combined strength;
 - b. The amalgamation will enable the TRANSFEREE COMPANY to consolidate its line of business by restructuring and re-organizing its business activities and Capital Structure;

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- c. The amalgamation will enable the amalgamated company to broad base their business activities under the roof of the TRANSFEREE COMPANY;
- d. The amalgamation will result in economy of scale including reduction in overhead expenses relating to management and administration in better and more productive utilization of various resources;
- e. The business of the TRANSFEROR COMPANY can be conveniently and advantageously combined together and in general with the business of the TRANSFEREE COMPANY concerned and will be carried on more economically and profitably under the said Scheme;
- f. The said Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned. The said scheme will also enable the undertakings and business of the said applicant company to obtain greater facilities possessed and enjoyed by one large company compared with a number of small Company for raising capital, securing and conducting trade on favorable terms and other benefits;
- g. The said scheme will contribute in furthering and fulfilling the objects of the Company concerned and in the growth and development of these businesses;
- h. The said scheme will strengthen and consolidate the position of the amalgamated company and will enable the amalgamated company to increase its profitability;
- i. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities;

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- j. The said scheme will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages;
- k. The said scheme will have beneficial results for the Companies concerned, their shareholders, employees and all concerned.
13. It is submitted by Ld. counsel appearing for the Petitioner(s) that, the Petitioner(s) have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 15 TH NOVEMBER,2022			
	EQUITY SHARE HOLDERS	PREFERENC E SHARE HOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
TRANSFEROR COMPANY / PETITIONER NO 1	20	NIL	NIL	2
TRANSFEE COMPANY / PETITIONER NO 2	10	NIL	1	47

14. It is submitted by Ld. counsel appearing for the Petitioner(s) that by an order dated 17THApril,2023 in Company Application No. C.A (CAA) No. 11 / (KB) / 2023 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

a. **Meetings dispensed:
Equity Shareholders**

Meeting of Equity Shareholders of the Petitioner Companies for considering the Scheme are dispensed with in view of all shareholders of Petitioner Companies having respectively given their consent to the Scheme by way of affidavits.

Secured Creditors

Meeting of Secured Creditors of the Petitioner No 2 for considering the Scheme are dispensed with in view of consent representing 100% in value of Secured Creditors of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits.

Unsecured Creditors

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Meeting of Unsecured Creditors of the Petitioner No 1 for considering the Scheme are dispensed with in view of consent representing 100% in value of Unsecured Creditors of Petitioner No 1 having respectively given their consent to the Scheme by way of affidavits.

Meeting of Unsecured Creditors of the Petitioner No 2 for considering the Scheme are dispensed with in view of consent representing 91.33% in value of Unsecured Creditors of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits.

b. No requirement of Meetings Secured Creditors

Secured Creditors of Petitioner No 1 – Nil Creditors verified by Auditors Certificate.

c. Meetings to be held

No meetings required to be held.

15. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 20th June,2023 the instant petition was admitted by this Tribunal and fixed for hearing on 28th July,2023 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 20th June,2023 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz:

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE NO	PAGE NO
THROUGH SPECIAL MESSENGER(BY HAND DELIVERY)			
Principal Commissioner of Income Tax – Central 1	04.07.2023	C	16
Income Tax Officer – Ward 3(1)	30.06.2023	C	17
Deputy Commissioner of Income Tax – Central Circle2(2)	04.07.2023	C	18
Regional Director, Eastern Region, Ministry of Company Affairs	28.06.2023	D	22
Upon Registrar Of Companies, West Bengal	28.06.2023	E	25

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Upon Reserve Bank of India, Kolkata Regional Office	30.06.2023	F	28
Upon Official Liquidator , High Court Calcutta	12.07.2023	G	29
BY ELECTRONIC MAIL			
Principal Commissioner of Income Tax – Central 1	14.07.2023	C	19
Deputy Commissioner of Income Tax – Central Circle 2(2)	14.07.2023	C	20
Director General of Income Tax Investigation	14.07.2023	C	21
Regional Director, Eastern Region, Ministry of Company Affairs	14.07.2023	E	23-24
Upon Registrar Of Companies, West Bengal	14.07.2023	E	26-27
PAPER PUBLICATION OF NOTICE			
In Financial Express – In English	29.06.2023	B	12 to 13
In Aajkaal – Bengali Translation	29.06.2023	B	14 to 15

An affidavit duly affirmed on 18th July, 2023 has also been filed with the Registry.

16. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
17. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
18. The Official Liquidator has filed his report dated 07th July, 2023 and concluded as under:-

“Para 8

That the Official Liquidator has not received any complaint against the Proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner till the date of filing of this Report.

Para 10

That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the

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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 Companies Act, 1956/the Companies Act, 2013 whichever is applicable.”

19. The RD has filed his reply affidavit dated 26th July, 2023 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 27th July, 2023(“Rejoinder”).The observations of the RD and responses of the Petitioner(s) 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 Amalgamation. Further, all the petitioner companies are also up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2022.

Paragraph 2 (a) of the Rejoinder

The Deponent submits that no adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no reply is made for the same.

Paragraph 2 (b) of RD Affidavit

As per Clause 1(b) of Part-II of the Scheme of Amalgamation, the Appointed Date of the Scheme is 1st April, 2022.

Paragraph 2 (b) of the Rejoinder

The Deponent submits that the Board of Directors of the Company have passed resolution approving the proposed Scheme of Amalgamation on 7th November, 2022 with Appointed dated 01st April,2022 and the application for Scheme was filed with Hon'ble Tribunal on 12th January, 2023 which is within one year from appointed date 01st April, 2022. Further, the observation made by the Regional Director is informative in nature, hence no reply is made for the same.

Paragraph 2 (c) of RD Affidavit

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That it is submitted that the Petitioner Transferee Company namely M/S Shree Bahubali Corporation Limited having its Certificate of Registration no. B-05.03044 dated 18/12/1998 is a registered NBFC with Reserve Bank of India. However, no NOC from RBI has been provided yet in the matter.

Paragraph 2 (c) of the Rejoinder

The Petitioner Transferee Company is a NBFC Company. Pursuant to the Order of the Hon'ble Tribunal it served notice upon 27-04-2023 and 30-06-2023.

The Petitioner Transferee Company made application to the Bank on 01-02-2023 and submitted information as called for on 05-04-2023.

The Bank vide their email dated 22.05.2023 and 26.05.2023 sought further information which was responded to the Bank on 09.06.2023 and by email dated 12.06.2023.

Copy of the notices served upon the bank, letter delivered to bank for issuance of NOC and email received from the bank and thereafter our reply are all collectively annexed and marked – ANNEXURE – B. (Page No 16 to 35 of Reply to Observation by RD).

Paragraph 2 (d) of RD Affidavit

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

Paragraph 2 (d) of the Rejoinder

The Deponent duly authorised hereby confirms that the Petitioner Transferee Company undertakes to file list / details of assets that will be transferred from the Transferor Company to the Transferee Company upon sanction and confirmation of the Scheme by the Hon'ble Tribunal.

Paragraph 2 (e) of RD Affidavit

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

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Paragraph 2 (e) of the Rejoinder

The Deponent duly authorised hereby confirms that the Transferee Company undertakes that it shall comply with the provisions of Sec 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital of the Transferor Company with the Authorized Share Capital of the Transferee Company in post-amalgamation and shall file a detailed statement thereof with the Registrar of Companies at the time of filing of INC – 28.

Paragraph 2(f) of RD Affidavit

That the Transferee Company should be directed to pay applicable stamp duty on transfer of the immovable properties Transferor Company.

Paragraph 2 (f) of the Rejoinder

The Deponent duly authorised hereby confirms that the Transferee Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to the Transferee Company.

Paragraph 2 (g) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners to 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 2 (g) of the Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby affirms 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 2 (h) of RD Affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 17/05/2023 for their views/observations in the matter. However, no such views/observations in the matter from the Income Tax Department has been made received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

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Paragraph 2 (h) of the Rejoinder

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon'ble Tribunal and have effected service upon the Income Tax Department. However, the said department have not made/ filed observation pursuant to the said notices filed by the Petitioner Companies.

20. The RD has filed his supplementary affidavit dated 19th October, 2023 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 27th October, 2023 (“Rejoinder”). The observations of the RD and responses of the Petitioner(s) are extracted hereinunder:-

Paragraph 2 (a) of RD Affidavit

That in respect of direction of the Hon'ble National Company Law Tribunal CLT, Kolkata Bench in C.P. (CAA) No. 78 / KB / 2023 in C.A.(CAA) No. 11 / KB / 2023 dated 24 / 08 / 2023 view of the communications dated 02 / 08 / 2023 together with 31 / 07 / 2023 of this Income Tax Department, Central 1 Kolkata as received from the Registry of Hon'ble NCLT Kolkata vide its letter dated 19/09/2023, it is submitted that the Income Tax Department in its above said letters, inter alia, stated that there is no impact in the assessment of Shree Bahubali Corporation Limited (Transferee Company) after the merger and further the pending issues can be examined even after amalgamation in the light of Deptt of Income Tax Vs Vodafone Essar Gujarat Ltd (2015) 16 SCC 629 Further, the Assessee has filed last ITR for AY 2022-23 and as per system a demand of Rs.59,92,369/- is outstanding against the Transferee Company. However, the Income Tax Department has no objection for Scheme of amalgamation. The Income Tax Department being also an authority designated with the Provision of Section 230(5) of the Companies Act, 2013 has submitted observation to the Hon'ble NCLT, Kolkata. In view of this and since Income Tax Department has no objection for the Scheme of amalgamation as

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it appears, this Deponent has no further comments upon the same. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

Paragraph 2 (a) of the Rejoinder

The Deponents duly authorized hereby submits that the Income Tax Authorities have conveyed their No objection to the proposed Scheme of Amalgamation. Further the Income Tax Authorities have also said that there will be no impact of the Scheme on Shree Bahubali Corporation Limited (Transferee Company) and also the pending issues can be examined by the Income Tax Department even after amalgamation.

The Deponents submits that as regards Demand of Rs 59,92,369/ the same is in respect of the Transferee Company and the Transferee Company continues to exist even after the sanction of the Scheme and the Income Tax Department can recover the same in accordance with the provisions as laid down in the said Act .

21. It is submitted by Ld. counsel appearing for the Petitioner(s) that, the Petitioner(s) have filed an affidavit duly affirmed on 27th October, 2023 wherein the annexed copies of email dated 07-08-2023 and 31-08-2023 received from the Bank and their reply for the same delivered to Bank on 12-09-2023 and letter No KOL.DOS.RSG.NO.S1699/04.01.005/CAL12882/20234-24 dated 28-09-2023 received from the Bank seeking their presence along with original certificate of Registration issued by the Bank for verification.
22. It is submitted by the Petitioner's counsel that this Tribunal give direction vide its order dates 6th May, 2024 to serve notice upon Reserve Bank of India for filing their reply to the letter dated 4th December, 2023 and 6th December, 2023 served upon them. Till date the Reserve Bank of India has not filed any reply to the notice served upon them on 5th June, 2024 and accordingly it is presumed that they have no reply to offer and the bench proceeds to reserve the matter.
23. Heard submissions made by the Ld. Counsel appearing for the Petitioner, submissions made by the RD, submissions made by the OL, the letters and

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documents submitted to the Reserve bank of India. Mr. Alok Tandon Joint Director appearing for RD submits that the office of the RD has no objection if the scheme is sanctioned. This statement was taken on record on the date of hearing, 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 mentioned in this Petition being **Annexure “A”** hereto be sanctioned by this Tribunal with the Appointed date as 1st day of April, 2022 and the same shall be binding on **KALKUT MARKETING PRIVATE LIMITED** with **SHREE BAHUBALI CORPORATIONLIMTIED** and their shareholders and all concerned;
- b. All the properties, rights and interest of **KALKUT MARKETING PRIVATE LIMITED** be transferred to and vested in without further act or deed in **SHREE BAHUBALI CORPORATIONLIMTIED** and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in **SHREE BAHUBALI CORPORATIONLIMTIED** for all the estate and interest of **KALKUT MARKETING PRIVATE LIMITED** but subject nevertheless to all charges, now affecting the same;
- c. All the liabilities and duties of **KALKUT MARKETING PRIVATE LIMITED** be transferred without further act or deed to **SHREE BAHUBALI CORPORATION Ltd.** and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of **SHREE BAHUBALI CORPORATION Ltd.**
- d. That all the proceedings and/or suit appeals now pending by or against **KALKUT MARKETING PRIVATE Ltd.** shall be continued by or against **SHREE BAHUBALI CORPORATION Ltd,** for which , the Transferee

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- company shall preserve necessary records in respect of Transferor companies as well as per the provisions of Section 239 of the Companies Act.
- e. The Transferee Company do issue and allot shares to the shareholders of **KALKUT MARKETING PRIVATE LIMITED** as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital;
 - f. The schedule of assets and liabilities in respect of **KALKUT MARKETING PRIVATE Ltd.** be filed within a period of 60 days from the date of the order to be made herein;
 - g. The Transferor Company of **KALKUT MARKETING PRIVATE LIMITED** shall stand dissolved from the effective date;
 - h. **SHREE BAHUBALI CORPORATION Ltd.** and **KALKUT MARKETING PRIVATE Ltd.** shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;
 - i. Any person/authority aggrieved shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
24. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
 25. The Company Petition **C.P (CAA) No. 78 / KB / 2023** connected with Company Application **C.A(CAA) NO 11 / KB / 2023** is disposed of accordingly.
 26. certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi

Bidisha Banerjee

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Member(Technical)

Member(Judicial)

Signed on this, the 10th Day of July, 2024.

BD