

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

**C.A. (CAA) No. 30/KB/2024**

***An application under Sections 230-232 of the Companies Act,  
2013 and the Companies (Compromises, Arrangements and  
Amalgamations) Rules, 2016;***

**IN THE MATTER OF:**

**BIP DEVELOPERS PRIVATE LIMITED**

**[CIN:U70101WB2000PTC091948], having its registered office at  
Bengal Intelligent Park, Building-Delta, 2<sup>nd</sup> Floor, Block EP&GP,  
Sector V, Salt Lake Electronics Complex, Kolkata - 700091**

**...Transferor Company No. 1/Applicant Company No. 1**

**1. TCG FACILITIES MANAGEMENT SERVICES PRIVATE LIMITED [CIN:  
U51109WB1999PTC090745], having its registered office at Bengal  
Intelligent Park, Building-Delta, 2<sup>nd</sup> Floor, Block EP&GP, Sector  
V, Salt Lake Electronics Complex, Kolkata – 700091**

**...Transferor Company No. 2/Applicant Company No. 2**

**2. TCG URBAN INFRASTRUCTURE HOLDINGS PRIVATE LIMITED  
[CIN: U65993WB1981PTC033405], having its registered office at  
Bengal Intelligent Park, Building-Delta, 2<sup>nd</sup> Floor, Block EP&GP,  
Sector V, Salt Lake Electronics Complex, Kolkata – 700091**

**...Transferee Company/Applicant Company No. 3**

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**AND**

**IN THE MATTER OF:**

**1. BIP DEVELOPERS PRIVATE LIMITED**

**...Transferor Company No. 1/Applicant Company No. 1**

**2. TCG FACILITIES MANAGEMENT SERVICES PRIVATE LIMITED**

**...Transferor Company No. 2/Applicant Company No. 2**

**3. TCG URBAN INFRASTRUCTURE HOLDINGS PRIVATE LIMITED**

**...Transferee Company/Applicant Company No. 3**

**Date of Pronouncement: 22<sup>nd</sup> July, 2024**

**CORAM:**

**SMT. BIDISHA BANERJEE. MEMBER (JUDICIAL)  
SHRI. D. ARVIND, MEMBER (TECHNICAL)**

**APPEARANCES:**

**Ms. Kiran Sharma, Adv. ] for Petitioner  
Ms. A. Bothra, Adv.**

**ORDER**

**Per: D. Arvind, Member (Technical)**

- 1.** The Court congregated through hybrid mode.
- 2.** The instant application has been filed in the first stage of the proceedings under Section 230 read with Section 232 of the Companies Act, 2013 ("**Act**") for directions with regard to meetings of shareholders and creditors in connection with the

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proposed **Scheme of Amalgamation** amongst **BIP Developers Private Limited** (hereinafter referred to as “**Transferor Company No. 1/Applicant Company No. 1**”), **TCG Facilities Management Services Private Limited** (hereinafter referred to as “**Transferor Company No. 2/Applicant Company No. 2**”) and **TCG Urban Infrastructure Holdings Private Limited** (hereinafter referred to as “**Transferee Company/Applicant Company No. 3**”) and their respective shareholders and creditors, whereby and whereunder the Transferor Company No. 1/Applicant Company No. 1 and Transferor Company No. 2/Applicant Company No. 2 are proposed to be amalgamated into and with the Transferee Company/Applicant Company No. 3 and the entire undertaking of the Transferor Company No. 1/Applicant Company No. 1 and Transferor Company No. 2/Applicant Company No. 2 are proposed to be amalgamated into and with the Transferee Company/Applicant Company No. 3 with effect from the Appointed Date, viz., April 1, 2022, in such manner and on such terms and conditions as stated in the said Scheme of Amalgamation (“**Scheme**”), a copy whereof is annexed to the Application and marked as **Annexure M** [page 318 of the Application].

- 3.** The Board of Directors of Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2 and Transferee Company/Applicant Company No. 3 have approved the said Scheme at their respective meetings held on March 27, 2023, March 20, 2023 and March 30, 2023, being **Annexure N** [page 346 to 362 of the Application], respectively,

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subject to the directions and sanctions of this Tribunal as required under law and other authorities that may be necessary.

- 4.** The Transferor Company No. 1/Applicant Company No. 1 is engaged in the business of real estate development, construction and thereby earning rental income through its developed properties. The Transferor Company No. 2/Applicant Company No. 2 is engaged in the business of maintenance of different commercial projects of the Transferee Company/Applicant Company No. 3. The Transferee Company/Applicant Company No. 3 is engaged in the business of real estate development, construction, leasing of commercial properties in India and providing related consultancy services.
- 5.** The Transferor Company No. 1/Applicant Company No. 1 is an indirectly held wholly owned subsidiary of the Transferee Company/Applicant Company No. 3 and Bengal Intelligent Parks Private Limited (**'BIPPL'**) which itself is another subsidiary of the Transferee Company/Applicant Company No. 3. The Transferor Company No. 2/Applicant Company No. 2 is a directly held wholly owned subsidiary of the Transferee Company/Applicant Company No. 3.
- 6.** It is stated in the Application that the Statutory Auditors of the Transferee Company/Applicant Company No. 3, Price Waterhouse & Co., Chartered Accountants LLP have confirmed that the accounting treatment proposed in terms of the Scheme is in compliance with applicable Accounting Standards specified under Section 133 of the Companies Act, 2013. Copy of the

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certificate has been annexed with the Application as **Annexure P** [page 375 of the Application].

7. The Authorized Equity Share Capital of the Transferor Company No. 1/Applicant Company No. 1, as on March 31, 2023 is Rs. 3,30,00,000/- divided into 33,00,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-Up share capital is Rs. 3,21,80,700/- divided into 32,18,070 Equity Shares of Rs. 10/- each. The entire paid-up equity share capital of the Transferor Company No. 1/Applicant Company No. 1 is held by the Transferee Company/Applicant Company No. 3 along with its nominees and BIPPL.
8. The Transferor Company/Applicant Company has the following classes of shareholders and creditors:

<b>Number of Equity Shareholders as on June 30, 2023</b>	<b>Number of Secured Creditors as on May 31, 2023</b>	<b>Number of Unsecured Creditors as on May 31, 2023</b>
8 (Annexure Q at page no. 377 of the Application)	1 (Annexure W at page no. 446 of the Application)	9 (Annexure W at page no. 446 of the Application)

9. A certificate by an independent chartered accountant dated July 7, 2023 certifying the shareholding pattern of the Transferor Company No. 1/Applicant Company No. 1 as on June 30, 2023 is annexed with the Application and marked as **Annexure Q**

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[page 377 of the Application]. A certificate by an independent chartered accountant dated June 9, 2023 certifying the list of secured creditors and unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1 as on May 31, 2023 is annexed with the Application and marked as **Annexure W** [page 446 of the Application].

- 10.** All the equity shareholders of the Transferor Company No. 1/Applicant Company No. 1 constituting 100% of the equity paid-up share capital of Transferor Company No. 1/Applicant Company No. 1 have given their consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, by way of their respective affidavits. A certificate by an independent chartered accountant dated August 18, 2023, certifying the number of equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by the equity shareholders of the Transferor Company No. 1/Applicant Company No. 1 are annexed and collectively marked as **Annexure R** [page 379 of the Application].
  
- 11.** The sole secured creditor of the Transferor Company No. 1/Applicant Company No. 1 constituting 100% of the outstanding debt has given its consent in writing agreeing to the Scheme and also consenting to waive the requirement of holding the meeting of the secured creditor of the Transferor Company No. 1/Applicant Company No. 1, by way of affidavit. The

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unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1 constituting more than 90% (Ninety percent) of the outstanding debt have given their consent in writing agreeing to the Scheme and also consenting to waive the requirement of holding the meeting of the unsecured creditors of the Transferor Company No. 1/ Applicant Company No. 1, by way of their respective affidavits. A certificate by an independent chartered accountant dated August 18, 2023, certifying that the sole secured creditor and more than 90% (by value) of unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1, as on May 31, 2023, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by the sole secured creditor and more than 90% (by value) of the unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1 are annexed and collectively marked as **Annexure X** [page 449 of the Application].

- 12.** The Authorized Equity Share Capital of the Transferor Company No. 2/Applicant Company No. 2, as on March 31, 2023 is Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The Issued, Subscribed and Paid-Up share capital is Rs. 5,00,000/- divided into 50,000 Equity Shares of Rs. 10/- each. The entire paid-up equity share capital of the Transferor Company No. 2/Applicant Company No. 2 is held by the Transferee Company/Applicant Company No. 3 along with its nominees.
  
- 13.** The Transferor Company No. 2/Applicant Company No. 2 has the following classes of shareholders and creditors:

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<b>Number of Equity Shareholders as on June 30, 2023</b>	<b>Number of Secured Creditors as on May 31, 2023</b>	<b>Number of Unsecured Creditors as on May 31, 2023</b>
7 (Annexure S at page no. 401 of the Application)	1 (Annexure Y at page no. 462 of the Application)	120 (Annexure Y at page no. 462 of the Application)

- 14.** A certificate by an independent chartered accountant dated July 7, 2023 certifying the shareholding pattern of the Transferor Company No. 2/Applicant Company No. 2 as on June 30, 2023 is annexed with the Application and marked as **Annexure S** [page 401 of the Application]. A certificate by an independent chartered accountant dated June 9, 2023 certifying the list of secured creditors and unsecured creditors of the Transferor Company No. 2/Applicant Company No. 2 as on May 31, 2023 is annexed with the Application and marked as **Annexure Y** [page 462 of the Application].
- 15.** All the equity shareholders of the Transferor Company No. 2/Applicant Company No. 2 constituting 100% of the equity paid-up share capital of Transferor Company No. 2/Applicant Company No. 2 have given their consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of equity shareholders of the Transferor Company No. 2/Applicant Company No. 2, by way of their respective affidavits. A certificate by an independent chartered accountant



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dated August 18, 2023, certifying the number of equity shareholders of the Transferor Company No. 2/Applicant Company No. 2, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by the equity shareholders of the Transferor Company No. 2/Applicant Company No. 2 are annexed and collectively marked as **Annexure T** [page 403 of the Application].

- 16.** The sole secured creditor of the Transferor Company No. 2/Applicant Company No. 2 constituting 100% of the outstanding debt has given its consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of the secured creditor of the Transferor Company No. 2/Applicant Company No. 2, by way of affidavit. The unsecured creditors of the Transferor Company No. 2/Applicant Company No. 2 constituting more than 90% (Ninety percent) of the outstanding debt have given their consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of the unsecured creditors of the Transferor Company No. 2/ Applicant Company No. 2, by way of their respective affidavits. A certificate by an independent chartered accountant dated August 18, 2023, certifying that the sole secured creditor and more than 90% (by value) of unsecured creditors of the Transferor Company No. 2/Applicant Company No. 2, as on May 31, 2023, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by the sole secured creditor and more than 90% (by value) of the unsecured creditors of the Transferor Company No.

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2/Applicant Company No. 2 are annexed and collectively marked as **Annexure Z** [page 473 of the Application].

**17.** The Authorized Equity Share Capital of the Transferee Company/Applicant Company No. 3, as on March 31, 2023 is Rs. 25,00,00,000/- divided into 2,50,00,000 Equity Shares of Rs. 10/- each whereas the Authorized Preference Share Capital of the Transferee Company/Applicant Company No. 3, as on March 31, 2023 is Rs. 190,00,00,000/- divided into 19,00,00,000 Preference Shares of Rs. 10/- each. The Issued, Subscribed and Paid-Up Equity Share capital is Rs. 16,41,47,640/- divided into 1,64,14,764 Equity Shares of Rs. 10/- each.

**18.** The Transferee Company/Applicant Company No. 3 has the following classes of shareholders and creditors:

<b>Number of Equity Shareholders as on June 30, 2023</b>	<b>Number of Secured Creditors as on July 31, 2023</b>	<b>Number of Unsecured Creditors as on May 31, 2023</b>
6 (Annexure U at page no. 422 of the Application)	5 (Annexure AA at page no. 680 of the Application)	89 (Annexure BB at page no. 682 of the Application)

**19.** A certificate by an independent chartered accountant dated July 7, 2023 certifying the shareholding pattern of the Transferee Company/Applicant Company No. 3 as on June 30, 2023 is

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annexed with the Application and marked as **Annexure U** [page 422 of the Application]. A certificate by an independent chartered accountant dated August 3, 2023 certifying the list of secured creditors of the Transferee Company/Applicant Company No. 3 as on July 31, 2023 is annexed with the Application and marked as **Annexure AA** [page 680 of the Application]. A certificate by an independent chartered accountant dated June 9, 2023 certifying the list of unsecured creditors of the Transferee Company/Applicant Company No. 3 as on May 31, 2023 is annexed with the Application and marked as **Annexure BB** [page 682 of the Application].

- 20.** All the equity shareholders of the Transferee Company/Applicant Company No. 3 constituting 100% of the equity paid-up share capital of Transferee Company/Applicant Company No. 3 have given their consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of equity shareholders of the Transferee Company/Applicant Company No. 3, by way of their respective affidavits. A certificate by an independent chartered accountant dated August 18, 2023, certifying the number of equity shareholders of the Transferee Company/Applicant Company No. 3, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by the equity shareholders of the Transferee Company/Applicant Company No. 3 are annexed and collectively marked as **Annexure V** [page 424 of the Application].

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- 21.** The secured creditors of the Transferee Company/Applicant Company No. 3 constituting 100% (by value) of the outstanding debt have given their consent in writing agreeing to the Scheme and also consenting to waive the requirement of holding the meeting of the secured creditors of the Transferee Company/Applicant Company No. 3, by way of affidavit. A certificate by an independent chartered accountant dated January 31, 2024, certifying that 100% (by value) of secured creditors of the Transferee Company/Applicant Company No. 3, as on July 31, 2023, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by more than 90% (by value) of the secured creditors of the Transferee Company/Applicant Company No. 3 are annexed and collectively marked as **Annexure GG** [page 998 of the Supplementary Affidavit affirmed on February 2, 2024 filed on behalf of the Transferee Company/Applicant Company No. 3].
- 22.** The unsecured creditors of the Transferee Company/Applicant Company No. 3 constituting more than 90% (Ninety percent) of the outstanding debt have given their consent in writing agreeing to the Scheme and consenting to waive the requirement of holding the meeting of the unsecured creditors of the Transferee Company/ Applicant Company No. 3, by way of their respective affidavits. A certificate by an independent chartered accountant dated August 18, 2023, certifying that more than 90% (by value) of unsecured creditors of the Transferee Company/Applicant Company No. 3, as on May 31, 2023, who have given their consent affidavits, along with copies of the affidavits provided in this regard, by more than 90% (by value) of the unsecured

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creditors of the Transferee Company/Applicant Company No. 3 are annexed and collectively marked as **Annexure CC** [page 688 of the Application].

- 23.** It is also submitted that the Scheme does not involve any corporate debt restructuring or any arrangement whatsoever between the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2 and Transferee Company/Applicant Company No. 3 and their creditors within the meaning of Sections 230 to 232 of Companies Act, 2013.
  
- 24.** Under provisions of the Competition Act, 2002 read with item 9 of Schedule I of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the instant Scheme will not require any clearance from the Competition Commission of India.
  
- 25.** In the facts and circumstances of this case, orders and directions are sought accordingly for:
  - a. Dispensing with the meeting of the equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, the Transferor Company No. 2/Applicant Company No. 2 and the Transferee Company/Applicant Company No. 3, as all the equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, the Transferor Company No. 2/Applicant Company No. 2 and the Transferee Company/Applicant Company No. 3 have already given their

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written consent by way of affidavit adopting the Scheme of Amalgamation and consenting to the dispensation of the meeting of equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, the Transferor Company No. 2/Applicant Company No. 2 and the Transferee Company/Applicant Company No. 3 respectively;

- b. Dispensing with the requirement of convening and conducting the meeting of the secured creditors of the Transferor Company No. 1/Applicant Company No. 1 for the proposed Scheme of Amalgamation in view of submissions made hereinabove and also in view of the affidavit received from the sole secured creditor of the Transferor Company No. 1/Applicant Company No. 1, consenting to the dispensation of the meeting of secured creditors;
  
- c. Dispensing with the requirement of convening and conducting the meeting of the unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1 for the proposed Scheme of Amalgamation in view of submissions made hereinabove and also in view of the affidavit received from more than 90% (by value) of the unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1, consenting to the dispensation of the meeting of unsecured creditors;
  
- d. Dispensing with the requirement of convening and conducting the meeting of the secured creditors of the Transferor

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Company No. 2/Applicant Company No. 2 for the proposed Scheme of Amalgamation in view of submissions made hereinabove and also in view of the affidavit received from the sole secured creditor of the Transferor Company No. 2/Applicant Company No. 2, consenting to the dispensation of the meeting of secured creditors;

- e. Dispensing with the requirement of convening and conducting the meeting of the unsecured creditors of the Transferor Company No. 2/Applicant Company No. 2 for the proposed Scheme of Amalgamation in view of submissions made hereinabove and also in view of the affidavits received from more than 90% (by value) of the unsecured creditors of the Transferor Company No. 2/Applicant Company No. 2, consenting to the dispensation of the meeting of unsecured creditors;
- f. Dispensing with the requirement of convening and conducting the meeting of the secured creditors of the Transferee Company/Applicant Company No. 3 for the proposed Scheme of Amalgamation in view of submissions made hereinabove and also in view of the affidavits received from more than 90% (by value) of the secured creditors of the Transferee Company/Applicant Company No. 3, consenting to the dispensation of the meeting of secured creditors.
- g. Dispensing with the requirement of convening and conducting the meeting of the unsecured creditors of the Transferee Company/Applicant Company No. 3 for the proposed Scheme

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of Amalgamation in view of submissions made hereinabove and also in view of the affidavits received from more than 90% (by value) of the unsecured creditors of the Transferee Company/Applicant Company No. 3, consenting to the dispensation of the meeting of unsecured creditors.

h. Service of notices on the Statutory Authorities as stated in paragraph no. 43 of the Application, pursuant to Section 230(5) of the Companies Act, 2013.

**26.** Upon perusing the records and documents in the instant proceedings and considering the submissions made on behalf of the Applicant Companies, we allow the instant application and make the following orders:

- a. In view of the consents given through affidavit by all the equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2, and Transferee Company/Applicant Company No. 3, the meeting of equity shareholders of the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2 and Transferee Company/Applicant Company No. 3 are dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013.
- b. In view of the consents given through affidavit by all the secured creditors of the Transferee Company/Applicant Company No. 3 and 1 (one) secured creditor each of



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Transferor Company No. 1/Applicant Company No. 1 and Transferor Company No. 2/Applicant Company No. 2, the meeting of secured creditors of the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2 and the Transferee Company/Applicant Company No. 3 are dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

- c. In view of the consents given through affidavit by more than 90% (by value) of the unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2, and Transferee Company/Applicant Company No. 3, the meeting of unsecured creditors of the Transferor Company No. 1/Applicant Company No. 1, Transferor Company No. 2/Applicant Company No. 2 and Transferee Company/Applicant Company No. 3 are dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013.

Notice under Section 230(5) of the Companies Act, 2013 along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Companies Act, 2013 shall be served by sending the same by hand delivery through special messenger or by speed post and by e-mail within two weeks from the date of receiving this order on the following:

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- i. Central Government of India (through Regional Director, Eastern Region, Ministry of Corporate Affairs);
  - ii. Registrar of Companies, West Bengal;
  - iii. Income-Tax Authorities having jurisdiction over the Transferor Companies/Applicant Companies; and
  - iv. Official Liquidator having jurisdiction over the Transferor Companies /Applicant Companies
- d. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy of such representation being simultaneously sent to the Advocates/Authorized Representative of the said Transferor Companies /Applicant Companies. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA3 of the said Rules with necessary variations, incorporating the directions herein.
- e. The Transferor Companies/Applicant Companies shall file an affidavit of service, to report to this Tribunal that the directions regarding the issuance of notices have been duly complied with within two weeks.

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- f. The Confirmation Petition to be filed within four weeks from the date of filing of Affidavit of Compliance.
- 27.** The application being Company Application C.A. (CAA) No. 30 of 2024 is **allowed** and **disposed of** accordingly.
- 28.** Urgent certified copy of this order, if applied for, be issued upon compliance with all the requisite formalities.

**D.Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This order is signed on the 22<sup>nd</sup> day of July, 2024**

Oindrila, K. (LRA)