

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT IV

C.P. (CAA)/26/MB/2024 IN
C.A.(CAA)/153/MB/2023

In the matter of the Companies Act, 2013;

And

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016;

And

In the matter of

Scheme of Amalgamation of

Damco India Private Limited

(‘First Petitioner Company’ / ‘Transferor Company’ / ‘DIPL’)

with

APM Terminals India Private Limited

(‘Second Petitioner Company’ / ‘Transferee Company’ / ‘APMT’)

And

their respective shareholders (‘Scheme’)

Damco India Private Limited

[CIN: U63000MH2009FTC191085]

... First Petitioner Company /
Transferor Company

APM Terminals India Private Limited

[CIN: U63090MH1989PTC083789]

... Second Petitioner Company /
Transferee Company

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(hereinafter collectively referred to as the “Petitioner Companies”)

Order delivered on: 12.07.2024

Coram:

Ms. Anu Jagmohan Singh
Hon’ble Member (Technical)

Mr. Kishore Vemulapalli
Hon’ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Hemant Sethi a/w Tanaya Sethi
and Devanshi Sethi i/b Hemant
Sethi & Co., Advocate.

For the Regional Director:

Mr. Tushar Wagh, Authorised
Representative on behalf of RD
(WR) Regional Director, WR,
MCA.

ORDER

1. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of Amalgamation of Damco India Private Limited (“First Petitioner Company” or “DIPL” or “Transferor Company”) with APM Terminals India Private Limited (“Second Petitioner Company” or “APMT” or “Transferee Company”) and their respective shareholders (“Scheme”).
2. The Counsel for the Petitioner Companies submits that the First Petitioner Company is currently engaged in the business of freight forwarding which

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includes air freight and ocean freight and supply chain management which includes providing warehousing services, transportation and other value-added services.

3. The Counsel for the Petitioner Companies submits that the Second Petitioner Company is *inter alia* engaged in the business of container freight station service, container repairs and maintenance services and transportation services.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions on 10th March, 2023. The Appointed date is 1st April, 2023.
5. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as may be required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted by the Petitioner Companies.
6. It is stated that, by sanction of this Scheme of Amalgamation of Damco India Private Limited with APM Terminals India Private Limited, the Petitioner Companies will be able to achieve the following rationale:

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- Both the Transferor Company and Transferee Company are part of the same group with similar set of shareholders.
- The Group has decided to restructure the business from 1st April, 2023 in India including integration of all business /employees /systems etc. Considering this decision, the Company has considered 1st April, 2023 as their Appointed date.
- Management of both the companies believe that it is in the best interest of all the stakeholders to consolidate the group companies.
- The following benefits will accrue pursuant to the Scheme:
 - i. Consolidation of the Business of the Transferor Company and Transferee Company;
 - ii. Reduction in number of companies and regulatory compliances thereof;
 - iii. Streamlining the Holding Structure;
 - iv. Ease of Management;
 - v. Reduction in Operating and Administrative costs; and Leveraging on synergies of consolidation.

The proposed Scheme will be beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of DIPL and APMT.

7. The Learned Counsel for Petitioner Companies submits that the valuation report dated 10th March 2023 obtained while filing of Application from

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registered valuer – D and P India Advisory Services LLP, having Registration No. IBBI/RV-E/05/2020/131. As per the Valuation Report, the Exchange Ratio is as under:

“3,811 (Three Thousand Eight Hundred and Eleven) equity shares of APMT of INR 10 each for every 1000 (One Thousand) equity shares of Damco of INR 10 each, fully paid up.”

8. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai and the Registrar of Companies (ROC) has filed its Report dated 10th June 2024, *inter alia* stating therein the observations on the Scheme as stated in paragraph 2 of the said Report. In response to the observations made by the Regional Director and ROC, the Petitioner Companies have filed a reply in Affidavit cum rejoinder on 19th June 2024 and have given necessary clarifications and undertakings. The observations made by the ROC and Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No. Para	ROC Report/Observations	Response of the Petitioner Companies.
a)	<i>i. That the ROC Mumbai in his report dated 08.05.2024 has stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaints under Companies Act 2013 are pending against the Petitioner Companies.</i>	This is a factual finding which is not adverse.
a)	<i>ii. As per the provisions of Section 232(3)(i) of</i>	The Transferee Company undertakes to

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<p><i>the CA, 2013, where the Transferor Company is dissolved, the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the amalgamation. Therefore, the remaining fee, if any after setting off the fees already paid by the Transfer Company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation.</i></p>	<p>comply with section 232(3)(i) of the Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Company, the fees, if any, paid by the Transferor Company on its Authorized Capital shall be set-off against any fees payable by the Transferee Company on its Authorized Capital pursuant to the Scheme of Amalgamation.</p>
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Sr. No. Para	RD Report/Observations	Response of the Petitioner Companies.
b)	<p><i>In compliance of AS-14 (IND-AS 103), the Transferor Companies 1,2 and Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with the applicable Accounting standards such as AS-5 (IND AS-8) etc.</i></p>	<p>As far as observations made in paragraph 2 (b) of the Report of Regional Director is concerned, the Transferee company provides that it shall pass such accounting entries which are necessary in connection with the scheme to comply with applicable accounting standards.</p>
c)	<p><i>The Hon'ble Tribunal may kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Scheme Application and Company Scheme</i></p>	<p>As far as observations made in paragraph 2(c) of the Report of Regional Director is concerned, the Petitioner Companies hereby affirm that the Scheme enclosed to the Company</p>

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	<i>Petition are one and same and there is no discrepancy, or no change is made.</i>	Scheme Application and Company Scheme Petition are one and the same and there is no discrepancy, or no change is made.
d)	<i>The Petitioner Companies under provision of Section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of this scheme by the Hon'ble Tribunal may not deter such authorities from dealing with any of the issues arising after giving effect to the Scheme. The decision of such authority shall be binding on the petitioner companies concerned.</i>	As far as observations made in paragraph 2(d) of the Report of Regional Director is concerned, the Petitioner Companies have served notices to concerned authorities which are likely to be affected by the Amalgamation. Further, the Petitioner Companies states that the approval of this scheme by the Hon'ble Tribunal will not deter such authorities from dealing with any of the issues arising after giving effect to the Scheme. The decision of such authority shall be binding on the Petitioner Companies and any such issues arising thereunder shall be decided in accordance with prevailing Law.
e)	<i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by requisite majority of members and creditors as per Section 230(6) of the Act in meetings duly held in terms of Section 230(1) read with subsection (3) to (5) of Section 230 of the Act and the minutes, thereof are duly placed before the Tribunal.</i>	As far as observations made in paragraph 2(e) of the Report of Regional Director is concerned, the Petitioner Companies provide that vide NCLT order in C.A.(CAA)/153(MB)2022 dated 11 th July 2023, the requirement of conducting meetings of the Equity Shareholders of the Petitioner Companies were dispensed with in view of the consent affidavits obtained from all the shareholders. Further, there are

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		<p>no secured creditors with both the Petitioner Companies and accordingly there is no question of conducting meeting of the secured creditors. Further, the Petitioner Companies have already delivered notices of proposed Amalgamation to its concerned unsecured creditors and no objections have been received. Further all such proof of notices have already been filed via an Affidavit with the Company Scheme Petition filed with the Hon'ble Tribunal.</p>
<p>f)</p>	<p><i>As per definition of the Scheme,</i></p> <p>1.1 (b) “Appointed date” means the opening business hours as on 1 April, 2023 or such other date(s) as maybe agreed by the respective Boards of the Transferor Company and the Transferee Company and approved by, or as directed or imposed by the Tribunal.</p> <p>1.1 (f) “Effective date” means the last of the dates on which the conditions mentioned in Clause 20 of this Scheme are complied with or are waived by the Board of the Transferor and Transferee Company. Any reference in this Scheme to the “date of coming into effect of this Scheme” or “upon the Scheme being effective” shall mean the Effective Date;</p>	<p>As far as observations made in paragraph 2(f) of the Report of Regional Director is concerned, the Petitioner Companies hereby affirm that the Appointed Date mentioned in the Scheme i.e. 01st April 2023, is in compliance with the Circular no. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs and the Scheme shall be effective from such date or a date as approved by the Hon'ble Tribunal in this regard.</p>

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	<p><i>In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the Scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the Appointed date. However, this aspect maybe decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular No. F. No. 7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
g)	<p><i>Petitioner Companies shall undertake to comply with the directions of the Income Tax Department & GST Department, if any.</i></p>	<p>As far as observations made in paragraph 2(g) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake to comply with the directions of the concerned Income tax department and GST department, if any. Further, the Petitioner Companies states that, the Transferor Company has received a letter from GST Department dated 22.04.2024 for claim of demand. In this regard, the Transferee Company undertakes that, the said claim is in dispute and the Transferor Company has filed a reply to that effect with the GST Department. The Transferee</p>

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		Company further states that, post amalgamation, all the assets and liabilities of the Transferor Company will be transferred to the Transferee Company and that the Transferee Company will settle/deal with the claim in accordance with prevailing Law.								
h)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	As far as observations made in paragraph 2(h) of the Report of Regional Director is concerned, the Petitioner Companies hereby undertake to comply with the directions of the concerned sectoral regulatory, if any.								
i)	<i>Petitioner Companies shares held by foreign shareholders; hence Hon'ble NCLT may direct the Petitioner Companies to comply with the Regulations of RBI, FEMA/FERA.</i>	As far as observations made in paragraph 2(i) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with any rules made under RBI, FEMA/FERA Act, in connection to the Scheme, if any and will reply/deal with the same in accordance with prevailing Law.								
j)	<p><i>It is observed from financial statements of Petitioner Companies as 31.03.2022, the details of shareholding is as follows:-</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;"><i>Name of the Company</i></th> <th style="text-align: center;"><i>Name of shareholder</i></th> <th style="text-align: center;"><i>% of shareholding</i></th> <th style="text-align: center;"><i>Remark</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><i>Damco India India</i></td> <td style="text-align: center;"><i>Maersk logistics &</i></td> <td style="text-align: center;"><i>99.99%</i></td> <td style="text-align: center;"><i>No form BEN-2 has been</i></td> </tr> </tbody> </table>	<i>Name of the Company</i>	<i>Name of shareholder</i>	<i>% of shareholding</i>	<i>Remark</i>	<i>Damco India India</i>	<i>Maersk logistics &</i>	<i>99.99%</i>	<i>No form BEN-2 has been</i>	As far as observations made in paragraph 2(j) of the Report of Regional Director is concerned, the Petitioner companies states that as per Section 90 of the Companies Act, 2013, the Form BEN-2 has to be filed for giving declaration with respect to the significant beneficial owners of the company, disclosing their interest in
<i>Name of the Company</i>	<i>Name of shareholder</i>	<i>% of shareholding</i>	<i>Remark</i>							
<i>Damco India India</i>	<i>Maersk logistics &</i>	<i>99.99%</i>	<i>No form BEN-2 has been</i>							

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	<i>Private Limited</i> <i>(Transferor Company)</i>	<i>Services International A/S</i> <i>(Formerly known as</i> <i>Damco International A/S)</i>	 100%	<i>filed by any of the Petitioner Companies as per records available at MCA21 portal</i>	<p>the company by way of shareholding or voting rights. Significant beneficial owners are such individual shareholders holding indirectly, or together with any direct holdings, not less than ten percent, of the shares or voting rights. In this regard, the Petitioner Companies states that, Form BEN-2 has not been filed for either of the Petitioner Companies as there are no individual beneficial shareholders in both the Petitioner Companies. Further, the shareholding pattern of the respective Petitioner Companies along with the shareholding pattern of parent company and the ultimate parent company in “Annexure A and B” of this rejoinder. Further, the Petitioner Companies hereby strive to highlight the fact that ultimate parent company is a listed company in Denmark and there are no individual beneficial shareholders. Further the Petitioner Companies undertake to comply with the provisions of Section 90 of the Companies Act, 2013 read with Companies Rules, 2018 as amended from time to time and make necessary filings with the Registrar of Companies. In case the Petitioner Companies do not comply with the</p>
<p><i>No form BEN-2 has been filed by any of the Petitioner Companies as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of the Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment.</i></p>					

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		aforesaid provision, liberty may be given to concerned Registrar of Companies to take appropriate actions against the Petitioner Companies with respect to the above issue and all issues arising thereunder shall be decided in accordance with Law.
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9. Mr. Tushar Wagh, Authorised Representative of office of Regional Director (WR), Mumbai, appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no objection to the Scheme.

10. The Official Liquidator has filed his report on 18th June 2024, *inter alia* stating therein the observations on the Scheme as stated in paragraph 5, 6 and 7 of the said Report. In response to the observations made by the Official Liquidator, the Petitioner Companies have filed a reply in Affidavit cum rejoinder on 19th day of June, 2024 and have given necessary clarifications and undertakings. The observations made by the Official Liquidator and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Sr. No. Para	OL Report/Observations	Response of the Petitioner Companies.

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5	<p><i>The Transferor Company has informed the following two criminal cases pending before various courts.</i></p>				<p>As far as observations made in paragraph 5 of the Report of Official Liquidator is concerned, the Transferor Company states that, the Transferor Company is the complainant in case no 1 and has filed a suit against the defendant - Vibha Chocolate. Further in case no 2, the Transferor Company had filed a case against Simon Brothers Pvt Ltd in connection to a cheque dishonour case wherein the MM court and Session Court has held the matter in favor of the Transferor Company and convicted the accused i.e. Simon Brothers Pvt Ltd. The Accused has filed a writ petition before the Hon'ble Bombay High Court against the decision of Session Court which is currently pending.</p> <p>Further, the Transferor Company states that, post amalgamation and upon dissolution of the Transferor Company without winding up, all the assets and liabilities (including the existing litigations) of the Transferor Company will be transferred to the Transferee Company and that the Transferee Company will settle/deal with it in accordance with prevailing Law.</p>
Relevant Authority	Complainant / Petitioner	Brief Description of Litigation	Amount		
<i>Magistrate Court, Ernakulam</i>	<i>Damco India Private Limited</i>	<i>Defendant – Vibha Chocolate This is a Criminal Complaint Under 138 of Negotiable Instrument Act for Dishonor of Cheque. The learned judge after detailed Section hearing has directed issuance of Non Bailable Warrant against the accused. On 17.01.2022 the learned judge directed issuance of summons and has posted the case to 25.04.2022</i>	<i>INR 16,60,807</i>		

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		<p><i>further consideration. learned for The Judge after perusing the records has tentatively adjourned the case to 16.07.2022. It was adjourned for repeating the Non Bailable Warrant issued to the accused.</i></p>	
<p><i>Hon'ble High Court, Bombay</i></p>	<p><i>Simon Brothers Pvt Ltd</i></p>	<p><i>Defendant - Damco India Private Limited This is a criminal writ petition filed by the Accused who was convicted by the MM Court in the Cheque dishonoured Case filed by Damco wherein the Accused was convicted and his</i></p>	<p><i>INR 3,12,896</i></p>

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		<p><i>conviction was also upheld by Session Court. The Accused has deposited Rs. 3 Lacs in the Hon'ble Court which Maersk Logistics has withdrawn with and undertaking that the withdrawal is subject to the final decision in the writ petition filed by Accused. We do not expect the matter to come up for hearing soon.</i></p>		
	<p><i>In case the outcome of the above mentioned case(s) goes against the Transferor Company, whether there are any implication on dissolution of company without winding up may be explained by the Transferor Company before Hon'ble Tribunal.</i></p>			
6	<p><i>The Statutory Auditor in its report annexed to the Financial Statements as at 31.03.2023 of</i></p>			<p>As far as observations made in paragraph 6 of the Report of Official Liquidator is</p>

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	<p><i>Damco India Private Limited (Transferor Company) under the heading Emphasis of Matter has observed the followings:</i></p> <p><i>“We draw your attention to Note 39 to the financial statements, regarding non-realisation of foreign currency receivables from non-resident companies aggregating to INR 1,142.71 lakhs as at March 31, 2023 which are outstanding for more than nine months from the date of exports. This is beyond the timelines as prescribed in RBI Master Direction on Export of Goods and Services vide FED Master Direction No. 16/2015-16 dated January 1, 2016 (as amended) and RBI Master Direction on Import of Goods and Services vide FED Master Direction No. 17/2016-17 dated January 1, 2016 (as amended). The Company has communicated the same to the AD Banker and is in the process of filing necessary documents for regularising such non-compliance”</i></p> <p><i>The Hon’ble Tribunal may be pleased to require the Transferor Company clarify in this respect.</i></p>	<p>concerned, the Transferor Company states that, the Transferor Company has communicated the same to the AD Banker and is in the process of regularizing the said non-compliance with respect to RBI Master Direction on Export of Goods and Services vide FED Master Direction No. 16/2015-16 dated January 1, 2016 (as amended) and RBI Master Direction on Import of Goods and Services vide FED Master Direction No. 17/2016-17 dated January 1, 2016 (as amended).</p> <p>Further, the Transferor Company states that, post amalgamation and upon dissolution of the Transferor Company without winding up, all the assets and liabilities of the Transferor Company will be transferred to the Transferee Company and that the Transferee Company will settle/deal with it in accordance with prevailing Law.</p>
7	<p><i>With reference to clause No. 15.1 of the scheme it is stated that such clauses overrides the provision of Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, ‘if a company is dissolved, the fees paid</i></p>	<p>As far as observations made in paragraph 7 of the Report of Official Liquidator is concerned, the Transferor Company states that, the Transferee Company will comply with section 232(3)(i) of the</p>

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<i>by such company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Company.</i>	Companies Act, 2013, wherein pursuant to the dissolution of the Transferor Company, the fees paid by the Transferor Company on its Authorised Capital shall be set off against any fees payable by the transferee company on its Authorised Capital.
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11. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
12. The approval of the Scheme will not affect the rights and contentions of all the Regulatory Authorities including Registrar of Companies and the same will remain open to take any action for non-compliance of the law and that such action, if taken would continue against the Transferee Company.
13. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
14. All the assets and liabilities including taxes and charges, if any and duties of the Transferor Company, shall pursuant to Section 232 of the Companies

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Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.

15. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA)/26(MB)2024 is made absolute in terms of the prayer clauses of the said joint Company Petition. Therefore, the Scheme is hereby **sanctioned**.

This Bench further orders that –

- i) The Appointed Date is fixed as **01.04.2023**. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Creditors and Employees.
- ii) The Transferor Company be dissolved without winding up.
- iii) The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of issuance of the certified copy of the Order from the Registry.
- iv) The Petitioner Companies to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy Registrar or the Assistant Registrar, as the case may be, of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of

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adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the certified copy of order.

- v) The Petitioner Companies shall comply with all the undertakings given by them.
- vi) The Petitioner Companies shall take all consequential and statutory steps required under the provisions of the Act in pursuance of the Scheme.
- vii) All concerned shall act on a copy of this Order along with the Scheme duly authenticated by the Registrar of this Tribunal.
- viii) Any person interested in the above matter shall be at liberty to apply to the Tribunal for any directions that may be necessary.

16. With the above directions, C.P.(CAA)/26(MB)2024 c/w C.A.(CAA)/153/MB/2023 is **allowed** and **disposed-off**. File to be consigned to records.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

12.07.2024/-