

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, C-IV

C.P. (CAA)/62/MB/2024 IN
C.A.(CAA)/267/MB/2023

In the matter of

The Companies Act, 2013

And

In the matter of

Sections 230 to Section 232 of the
Companies Act, 2013 and other
applicable provisions of the Companies
Act, 2013 read with Companies
(Compromises, Arrangements and
Amalgamation) Rules, 2016 and
regulations framed thereunder

AND

In the matter of Scheme of
Amalgamation amongst

**Blue Heaven Cosmetics Private
Limited**

and

G C Cosmetics Private Limited

and

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Esme Consumer Private Limited
and their respective shareholders ("the
Scheme")

Blue Heaven Cosmetics Private Limited,

[CIN: U24246MH2002PTC411209] ...First Petitioner Company/
Transferor Company No. 1

G C Cosmetics Private Limited,

[CIN: U74899MH1989PTC411206] ...Second Petitioner Company/
Transferor Company No.2

Esme Consumer Private Limited,

[CIN: U24233MH1998PTC411207] ...Third Petitioner Company/
Transferee Company

(Collectively known as 'Petitioner Companies')

Order delivered on: 19.07.2024

Coram:

Ms. Anu Jagmohan Singh

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

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Appearances (via videoconferencing):

For the Applicants : CA Harsh Ruparelia i/b A R
C H and Associates,
Chartered Accountants

For the Regional Director : Mr. Altap Sheikh,
Authorised Representative
on behalf of RD (WR)

ORDER

1. Heard the Ld. Professional for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ('Act') for the Scheme of Amalgamation amongst Blue Heaven Cosmetics Private Limited and G C Cosmetics Private Limited and Esme Consumer Private Limited and their respective shareholders ("the Scheme"), pursuant to the provisions of Sections 230 to 232 of the Companies Act, 2013 read with applicable rules & regulations framed in this regard.

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3. The Professional for the Petitioner Companies submits that the Petitioner Companies are engaged in the following business as below:

- The First Petitioner Company is currently engaged in the business of manufacturing and wholesale trading of numerous cosmetics products under the brand name - "Blue Heaven".
- The Second Petitioner Company is currently engaged in the business of manufacturing nail polish and other beauty products under the brand name - "Blue Heaven".
- The Third Petitioner Company is currently engaged in the business of manufacturing, distribution and marketing of skin care products under the brand name – NATURE'S ESSENCE.

4. The Professional for the Petitioner Companies submits that the Scheme is expected to yield the following benefits:

Rationale for the Scheme:

The Scheme involves merger of the First Petitioner Company and the Second Petitioner Company (collectively referred to as 'Transferor Companies') with the Third Petitioner Company. The objective of the Scheme is to consolidate the business of the Transferor Companies with the Third Petitioner Company in a manner which will enable

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creation of a consolidated business of considerable size. The rationale for the Scheme is set out below:

- The Scheme will result in financial resources as well as managerial, technical, distribution and marketing resources of the Transferor Companies and Third Petitioner Company being efficiently pooled, leading to a centralized and more efficient management of funds, greater economies of scale and a bigger and stronger resource base for future growth of the business, which are presently divided and are getting dissipated amongst different companies;
- Streamlining and simplification of the overall group structure;
- Rationalizing costs by eliminating multiple record keeping and administrative functions;
- Better and more economic and efficient management, control and running of the business;
- Synergies arising out of consolidation of the business through the Scheme will lead to: (i) alignment of interest of all shareholders and stakeholders, (ii) improved earnings and cash flow of the Third Petitioner Company as the merged company, and (iii) improved alignments of future debt repayments with improved and unfettered cash flow generated by the consolidated business;

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- The Third Petitioner Company as the merged company will facilitate fund raising (both debt and equity) due to its enlarged net worth base and increased business capability to offer a wider portfolio of products and services to its customers by virtue of its diversified businesses, enlarged resource base and deeper client relationships, thus improving its ability to effectively exploit the growing market potential and enhanced business prospects;
 - Reducing time and efforts for consolidation of financials at group level and better administration and cost reduction, including reduction in administrative, and other costs associated with the Transferor Companies;
 - Greater administration efficiency.
5. The Petitioner Companies have approved the Scheme by passing Board Resolutions on 20th October 2023 and have approached the Tribunal for sanction of the Scheme.

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6. The Petitioner Companies submits that the Company Scheme Petition has been filed in consonance with the order dated 17th January 2024 passed by this Tribunal in C.A.(CAA)/267/MB/2023. Further, the meetings of shareholders, secured creditors were not required to be held, wherever applicable by the Tribunal vide order dated 17th January 2024 in CA(CAA)/267/MB/2023. Further, there are no secured creditors in the Second Petitioner Company, so question of convening the meeting does not arise. The First Petitioner Company and the Third Petitioner Company had submitted consent affidavits from the Secured Creditors along with additional affidavit in support of the Company Scheme Application. Hence, the question of convening the meeting did not arise. Further, in compliance with the order of the Tribunal dated 17th January 2024 in CA(CAA)/267/MB/2023, the meetings of the unsecured creditors of the Petitioner Companies were conducted by the Chairperson and Scrutinizer and also filed the report in this regard. It is seen that the Scheme is approved by the requisite majority of unsecured creditors of the Petitioner Companies in terms of provisions of Section 230 to 232 of the Companies Act, 2013 read with applicable rules & regulations framed thereunder.

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7. The Petitioner Companies state that the Petitioner Companies have complied with all the requirements as per directions of the Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 2013 and the Rules & Regulations made there under. The said undertaking is accepted.
8. The Regional Director, Western Region on behalf of the Central Government has filed their Report dated 22nd May 2024 ('Report') praying that this Tribunal may pass such orders as it thinks fit, making certain observations in paragraph 2 (a) to (i) of the Report. In response to the observation made by the Regional Director, the Petitioner Companies have also given necessary undertakings and clarification vide their affidavit in reply to observations of the Regional Director dated 4th June 2024. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

Para No. 2	Observations as per the report of the Central Government dated 22nd May 2024	Response of the Petitioner Companies
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<p>(a)</p>	<p><i>That on examination of the report of the Registrar of Companies, Mumbai dated 30.04.2024 (Annexed as Annexure A-1) that Petitioner Companies falls within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Arrangement has been received in the matter of the Petitioner Company. Further, the Petitioner Companies has filed Financial Statements up to 30.03.2023.</i></p> <p><i>i. That the ROC Mumbai in its report dated 30.04.2024 has also stated that No Inquiry, Inspection, Investigations, Prosecutions and Complaint under Companies Act, 2013 are pending against the Petitioner Companies</i></p> <p><i>ii. Further ROC has mentioned as follows:</i></p> <p><i>a. As per provisions of section 232(3)(i) of CA, 2013 where the transferor company is dissolved, the fee, if any,</i></p>	<p><u>Our Reply 2(a)(i)</u></p> <p>As far as the observation of the Regional Director, as stated in paragraph 2(a)(i) of the report and reproduced hereinabove is concerned, the contents being statements of fact does not require any comments.</p> <p><u>Our Reply 2(a)(ii)</u></p>
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<p><i>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 transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to amalgamation</i></p> <p><i>b. Interest of the Creditors should be protected.</i></p> <p><i>The Petitioner Companies may please be directed to submit a reply on the above observation of jurisdictional ROCs.</i></p>	<p>As far as the observation of the Regional Director, as stated in 2(a)(ii)(a) of the report and reproduced hereinabove is concerned, the Petitioner Companies undertake that they would comply with the provisions set out in Section 232(3)(i) of the Companies Act, 2013 and that the fee, if any, paid by the Transferor Companies on its authorized share capital shall be set off against any fees payable by the Transferee Company on increase of its authorized share capital subsequent to the amalgamation, if applicable.</p> <p>As far as the observation of the Regional Director, as stated in paragraph 2(a)(ii)(b) of the report and reproduced hereinabove is concerned, the Petitioner Companies undertake that the interest of all the creditors of the Petitioner Companies shall be protected.</p>
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<p>(b)</p>	<p><i>In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the transferee company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.</i></p>	<p>As far as the observation of the Regional Director, as stated in paragraph 2(b) of the report and reproduced hereinabove is concerned, the Third Petitioner Company submits that it shall pass applicable necessary accounting entries in connection with IND AS-103 and comply with all other applicable Accounting Standards such AS-5 or IND AS-8, etc.</p>
<p>(c)</p>	<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 Application and Company Petition are one and same and there is no discrepancy, or no change is made.</i></p>	<p>As far as the observation of the Regional Director, as stated in paragraph 2(c) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.</p>

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<p>(d)</p>	<p><i>The Petitioner Companies under provisions 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 the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</i></p>	<p>As far as the observation of the Regional Director, as stated in paragraph 2(d) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that they have served notices under the provisions of section 230(5) of the Companies Act, to all the concerned authorities as directed by the Hon'ble Tribunal which are likely to be affected by the Scheme. Further the Petitioner Companies submits that the approval of the Scheme by the NCLT would not deter such authorities to deal with any of the issues arising after giving effect to the Scheme and the decision of such authorities would be binding on the Petitioner Companies.</p>
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<p>(e) <i>The Hon'ble Tribunal may kindly seek the undertaking that this Scheme is approved by the 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 7 subsection (3) to (5) of Section 230 of the Act and the Minutes, thereof are duly placed before the Tribunal.</i></p>	<p>As far as the observation of the Regional Director, as stated in paragraph 2(e) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that as per Order dated 17 January 2024 passed by this Tribunal in the Company Scheme Application No. 267 of 2023 ("Order"), the meeting of equity shareholders of the Petitioner Companies was dispensed with in the light of consent affidavits received from all the equity shareholders of the Petitioner Companies. The meeting of secured creditors of First Petitioner Company and Third Petitioner Company was dispensed with in the light of</p>
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		<p>consent affidavits obtained from all the secured creditors by the First Petitioner Company and the Third Petitioner Company. There were no secured creditors in the Second Petitioner Company and as such the question of convening and holding a meeting did not arise. As per the Order the meeting of the unsecured creditors of the respective Petitioner Companies was conducted on 12 March 2024. The Scheme was approved with requisite majority of unsecured creditors present and voting in the meeting of the unsecured creditors of the respective Petitioner Companies.</p>
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f)	<p><i>As per Definition of the Scheme,</i></p> <p>"Appointed Date" means 1st day of April 2023, or such other date as may be fixed or approved by the National Company Law Tribunal at Mumbai, or such other date as may be determined by the Board of Directors of the Transferor Company, Transferee Company and the Resulting Company with approval of NCLT or such other date as the NCLT may direct.</p> <p>"Effective Date" or "coming into effect of this Scheme" or "upon the scheme becoming effective" or "effectiveness of the scheme" means the date on which the certified or authenticated copies of the order sanctioning this Scheme, passed by the National Company Law Tribunal at Mumbai are filed with the Registrar of Companies.</p> <p>"Record Date" means such date, to be fixed by the Board of the Transferor Company 1 in consultation with the Board of the Transferee Company for the purpose of determining the equity shareholders of the Transferor</p>	<p>As far as the observation of the Regional Director, as stated in paragraph 2(f) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that the Appointed Date i.e., 1st April 2023 has been clearly indicated in the Scheme in accordance with provisions of section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from the Appointed Date. Hence, the Petitioner Companies undertake that they are in compliance with the applicable requirements of the Circular no. F. No. 7/12/2019/CL-1 dated 21-08-2019 issued by the Ministry of Corporate Affairs.</p>
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<p><i>Company 1 to whom shares of the Transferee Company shall be allotted pursuant to Clause 6 under the Scheme.</i></p> <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 may be decided by the Hon'ble Tribunal taking into account its inherent powers.</i></p> <p><i>The Petitioner Companies shall undertake to comply with the requirements as clarified vide circular no. F. No. 7 /12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
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(g)	<i>Petitioner Companies shall undertake to comply with the directions of Income tax department & GST Department, if any.</i>	As far as the observation of the Regional Director, as stated in paragraph 2(g) of the report and reproduced hereinabove is concerned, the Petitioner Companies shall undertake to comply with the directions of Income tax department and GST department, if any.
(h)	<i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if any.</i>	As far as the observation of the Regional Director, as stated in paragraph 2(h) of the report and reproduced hereinabove is concerned, the Petitioner Companies shall undertake to comply with the directions of concerned sectoral Regulatory, if any.

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(i)	<p><i>As per shareholding pattern as on 30.06.2023 enclosed at Annexure G -1, 2, 3 at Petitioner Company's reply dated 10.05.2024 submitted by the Petitioner company, details of shareholding is as follows:-</i></p>					<p>As far as the observation of the Regional Director, as stated in paragraph 2(i) of the report and reproduced hereinabove is concerned, the Petitioner Companies submit that they do not have any significant beneficial ownership to be reported. Form No. BEN-2 provides for filing of Return of Significant Beneficial Owners in Shares with the Registrar, in terms of Rule 4 of the Companies (Significant Beneficial Owners) Rules, 2019 ("SBO Rules"). Rule 2, sub-rule 1(h) of the SBO Rules provides for the parameters to identify the Significant Beneficial Owner ("SBO"). Section 90 of the Companies Act, 2013 ("the Act") provides for the law on the Register</p>
S r. N o .	Petition er Compa ny	Nam e of share holde r	% of sha res hel d	Rem ark		
1	Blue Heaven Cosmeti cs Private Limited	Esme Cons umer Priva te Limit ed	70 %	No For m BE N-2 has been		
2	G C Cosmeti cs Private Limited	Blue Heav en Cosm etics Priva te Limit ed	99. 99 %	filed by any of the Petit ione r Com pani es as		
3	Esme Consu	Sama ra	100 %			

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	<i>mer Private Limited</i>	<i>Alter nate Inves tmen t Fund</i>	<i>per reco rds avail able at MC A21 Port al</i>	<p>of Significant Beneficial Owners (“SBO”) in a Company, which states that an individual is considered SBO when he holds beneficial interests of at least 10% (erstwhile 25%) in shares of a company, or has the right to exercise or actually exercises significant influence, or has the right to exercise or actually exercises control over the company. Further as per Explanation III to Rule 2, sub-rule 1(h) of the SBO Rules, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if the individual holds majority stake in the member of such reporting entity. With respect to First Petitioner Company and Third Petitioner Company, no individual</p>
<p><i>No Form BEN-2 has been filed by any of the Petitioner Company as per records available at MCA21 Portal, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act, 2013 r/w. Companies (Significant Beneficial Owners) Amendment.</i></p>				

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		indirectly holds beneficial interest of at least 10%. With respect to the Second Petitioner Company, no individual holds majority stake in the member of the Second Petitioner Company (i.e., no individual holds majority stake in the First Petitioner Company.) Hence Form No. BEN-2 is not applicable, however, it undertakes to file Form BEN-2 if applicability thereof is established at any time in the future.
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9. Mr. Altap Sheikh, Ld. Authorized Representative of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, present at the time of final hearing, has stated that the explanation and representation given by the Petitioner Companies is satisfactory and that they have no objection for approving the Scheme by this Tribunal. Further heard, clarifications and undertakings given by the Petitioner Companies are accepted by this Tribunal.

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10. The Official Liquidator, High Court, Bombay has filed its report dated 21st May 2024, stating that the affairs of the First Petitioner Company and the Second Petitioner Company have been conducted in proper manner and there are no adverse findings made by the Official Liquidator, High Court, Bombay, in the conduct of the First Petitioner Company and the Second Petitioner Company. The observations made by the Official Liquidator, High Court, Bombay are taken on record.
11. The Third Petitioner Company hereby undertakes that all the liabilities and legal proceedings of the First Petitioner Company and Second Petitioner Company shall be transferred to Third Petitioner Company in accordance with the Scheme. The legal proceedings, whether civil or criminal, if any of whatsoever nature shall not abate as a result of the present Scheme and shall be taken over by the Third Petitioner Company.

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12. Further, the Third Petitioner Company hereby undertakes that all the duties, direct and indirect taxes (including any advance taxes), GST liabilities, liabilities under the erstwhile provisions of the VAT Act, Sales Tax Act, customs duty, excise duty and any other tax obligations or litigations thereunder for any tax laws for the First Petitioner Company shall be transferred to Third Petitioner Company, as a result of the Scheme. Further, upon effectiveness of the Scheme the Third Petitioner Company i.e., the Transferee Company undertakes to have all legal or other proceedings initiated by or against the First Petitioner Company, transferred into its name and to have the same continued, prosecuted and enforced by or against the Third Petitioner Company to the exclusion of the First Petitioner Company. The Third Petitioner Company hereby undertakes that all the duties, direct and indirect taxes (including any advance taxes), GST liabilities, liabilities under the erstwhile provisions of the VAT Act, Sales Tax Act, customs duty, excise duty and any other tax obligations or litigations thereunder for any tax laws for the Second Petitioner Company shall be transferred to Third Petitioner Company, as a result of the Scheme. Further, upon effectiveness of the Scheme the Third Petitioner Company i.e., the Transferee Company undertakes to have all legal or other

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proceedings initiated by or against the Second Petitioner Company, transferred into its name and to have the same continued, prosecuted and enforced by or against the Third Petitioner Company to the exclusion of the Second Petitioner Company.

13. Further effectiveness of this Scheme shall not deter any regulatory authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the First Petitioner Company and the Third Petitioner Company undertakes that all such proceedings shall continue in its own name. The effectiveness of this Scheme shall not deter any regulatory authorities to initiate action, proceedings, prosecution, investigation or any regulatory action against the Second Petitioner Company and the Third Petitioner Company undertakes that all such proceedings shall continue in its own name.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

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15. Upon coming into effect of the Scheme and in consideration for amalgamation of First Petitioner Company with the Third Petitioner Company, the Third Petitioner Company, shall, without any further application or deed, issue and allot equity shares of face value Rs.10/- each, credited as fully paid up, to the shareholders of the First Petitioner Company whose name appear in the register of members of the First Petitioner Company on the Record Date or to their respective heirs, executors, administrators or other legal representatives or the successors-in-title, as the case may be, in the following proportion (the "Share Entitlement Ratio"):

"32,209 (Thirty Two Thousand Two Hundred and Nine) Equity Shares in the Transferee Company of the face value of Rs.10/- (Rupees Ten) each credited as fully paid-up for every 1,000 (One Thousand) equity shares of Rs. 10/- (Rupees Ten) each fully paid-up, held by such member in the Transferor Company 1."

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16. The entire issued, subscribed and paid-up equity share capital of the Second Petitioner Company is held by the First Petitioner Company. Upon effectiveness of Part C of the Scheme, the Second Petitioner Company shall become a wholly owned subsidiary of the Third Petitioner Company. No shares of the Third Petitioner Company shall be issued or allotted in lieu or exchange of its holding in the Second Petitioner Company and, investment in the share capital of the Second Petitioner Company held by the Third Petitioner Company as on the Effective Date shall stand automatically cancelled accordingly, without any further application, act, instrument or deed.
17. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/62 (MB)/2024 connected with C.A.(CAA)/267/MB/2023 filed by the Petitioner Companies is made absolute in terms of prayer clauses of the said Company Scheme Petition.

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18. The Scheme annexed at Annexure 'D' to the Company Scheme Petition is hereby sanctioned, and the Appointed Date of the scheme is 1st April 2023. It shall be binding on the Petitioner Companies involved in the Scheme and all concerned including their respective Shareholders, Secured Creditors, Unsecured Creditors/Trade Creditors, Employees and/or any other stakeholders concerned.
19. The Petitioner Companies are directed to file a certified copy of this Order along with the copy of Scheme with the concerned Registrar of Companies, electronically in e-form INC-28 within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the Designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.

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20. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified Order from the Registry of this Tribunal.
21. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Designated Registrar of this Tribunal.
22. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
23. Any concerned authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
24. Ordered accordingly. Thus, the Company Scheme Petition with C.P. (CAA) / 62 (MB) / 2024 in C.A. (CAA) / 267 (MB) / 2023 shall stand to be disposed off.

Sd/-

Anu Jagmohan Singh
Member (Technical)
19.07.2024

Sd/-

Kishore Vemulapalli
Member (Judicial)