

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH, BENGALURU**  
*[[Through Physical hearing/VC Mode (Hybrid)]]*

**C.P. (CAA)No.44/BB/2023  
(Second Motion)**

U/ss.230-232 and other applicable provisions  
of the Companies Act, 2013

**IN THE MATTER OF:**

**UJJIVAN FINANCIAL SERVICES LIMITED**

R/o. at Grape Garden,  
No. 27, 3rd 'A' Cross, 18<sup>th</sup> Main, 6<sup>th</sup> Block,  
Koramangala,  
Bengaluru – 560 095.

... PETITIONER COMPANY NO. 1/  
TRANSFEROR COMPANY

**AND**

**UJJIVAN SMALL FINANCE BANK LIMITED**

R/o. at Grape Garden,  
No.27, 3rd 'A' Cross 18th Main 6th Block,  
Koramangala,  
Bengaluru – 560 095

... PETITIONER COMPANY NO. 2/  
TRANSFeree COMPANY

**Order delivered on: 19<sup>th</sup> April, 2024**

**CORAM:** 1. Hon'ble Shri K. Biswal, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner Company : Shri Saji P. John  
For the ROC & RD : Shri Hemanth Rao  
For the IT Department : Shri Ganesh R. Ghale

**ORDER**

**Per: K. Biswal, Member (Judicial)**

1. This is a second motion joint Petition filed on 15/11/2023 by **M/s. Ujjivan Financial Services Limited** (for brevity, the "Petitioner Company No.1/Transferor Company") and **M/s. Ujjivan Small Finance Bank Limited** (for brevity, the "Petitioner Company No.2/Transferee Company"), under Sections 230 to 232 of the Companies

Act, 2013 (for short to be referred hereinafter as the "Act") and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, 'Rules'), *inter alia*, seeking for the sanction of Scheme of Amalgamation between the Petitioner Companies w.e.f. 01.04.2023.

2. The Petitioner Companies filed First Motion Application bearing C.A. (CAA)No.17/BB/2023 before this Tribunal under Sections 230 to 232 of the Companies Act, 2013. Based on the said Application vide Order dated 08.09.2023 of this Tribunal the meetings of Equity Shareholders of the Transferor Company and the Transferee Company were directed to be convened, and dispensation for convening meeting(s) of preference shareholders, unsecured creditors, debenture holders, and deposit holders of the Transferee Company was granted. Further, the Transferee Company had no secured creditors and the Transferor Company had no creditor, therefore the requirement of convening their meeting(s) did not arise.

In compliance with the above directions, meeting of the Equity Shareholders of the Applicant Companies have been conducted by the Chairperson and Scrutinizer who have also filed their reports in this regard, which are placed as Annexures-19 & 21 to the Petition. It is seen that the Equity Shareholders of the Petitioner Companies have approved the proposed Scheme.

3. Vide Order dated 07.12.2023 of this Tribunal, the following directions were issued:-

*"...4. The Petition be listed for hearing on **30.01.2024**. At least ten days before the date fixed for final hearing, the Petitioner Company shall publish the notice of final hearing of the Company Petition in two local newspapers viz. "The Financial Express" in English edition and translation thereof in "Hosadigantha" in Kannada edition, both having circulation in Bangalore as per Rule 16 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.*

*5. Notice be also served upon the Objector(s) or their representative as contemplated under sub-section (4) of Section 230 of the Act, 2013 at least 15 days before the date fixed for hearing who may have made representation and who have desired to be heard in the representation along with a cop of the Petition and the annexure filed therewith. It is to be specified in the notices that the objections, if any, to the Scheme*

*may be filed within thirty days from the date of the receipt of the notice, failing which, it will be considered that there is no objection to the approval of the Scheme on the part of the objector(s).*

*6. In addition to the above public notice, the Petitioner Companies shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory statement and the disclosures mentioned in Rule 6 of the "Rules" to (a) Regional Director (South East Region), Hyderabad (b) Registrar of Companies, Karnataka, Bengaluru (c) the office of the Official Liquidator (d) the Reserve Bank of India (e) Principal Chief Commissioner of Income Tax, Karnataka & Goa being the Designated Nodal Officer (f) Jurisdictional Income Tax Authorities by disclosing the PAN numbers of the Petitioner Companies (g) the Securities and Exchange Board of India (h) National Stock Exchange of India Ltd., and (i) BSE Limited along with the copy of this Petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective Companies involved in the Scheme as per Rule 8 of the Companies (CAA) Rules, 2016, with a direction that they may submit their representation, if any, within thirty days from the date of receipt of such notice, failing which, it will be presumed that the said Authority has no representation to make to the Scheme.*

*7. The Petitioner Company shall host notices of final hearing along with the copy of the scheme on their websites, if any. The Petitioner Company shall at least 7 days before the date of hearing of the Petition file an affidavit of service regarding paper publication as well as service of notices on the Authorities specified above including the sectoral regulator as well as the objectors, if any. The Petitioner Company shall file compliance report with this Tribunal at least 10 (ten) days before the date fixed for final hearing and report to this Tribunal that the directions regarding the service of notices upon regulatory authorities and publication of advertisement of the notice of hearing in the newspapers have been duly complied with."*

4. In pursuant to the Order dated 07.12.2023, the learned Counsel for the Petitioner Companies has filed copies of proof of service of notices, paper clippings of Paper Publication and the no objectors' affidavit vide Diary Nos.153 and 154 dated 08.01.2024 respectively.
5. The main objects, dates of Incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first Motion Order dated 08.09.2023.
6. The Board Resolution of the Petitioner Company approving the Scheme is annexed as Annexures-11 to 138 to the Petition.

7. It is submitted that the Certificate of Statutory Auditors of the Petitioner Company No.1 i.e., M/s. Varma & Varma, Chartered Accountants vide Certificate dated 14.10.2022, have *inter alia*, certified that the Accounting Treatment contained in Clause 4.9.2 of the Scheme is in compliance with the Accounting Standards prescribed under Section 133 of the Act. The aforesaid Certificate is attached as **Annexure-15** to the Petition.
8. It is further submitted that the Certificate of Statutory Auditors of the Petitioner Company No.2 i.e., M/s. Mukund M. Chitale & Co., Chartered Accountants vide Certificate dated 14.10.2022, have *inter alia*, certified that the Accounting Treatment contained in Clause 4.9.1 of the Scheme is in compliance with the Accounting Standards prescribed under Section 133 of the Act. The aforesaid Certificate is attached as **Annexure-16** to the Petition.
9. Ld. Counsel for the Petitioner Companies have filed affidavits confirming that no investigations or proceedings are pending against the Petitioner Companies under the erstwhile Companies Act, 1956 and the Companies Act, 2013. Further, details of ongoing adjudication and recovery proceedings and enforcement action, if any, under other Acts against the Petitioner Companies, its promoters and directors as on 31.10.2023 are annexed as Annexures-23 and 24 to the Petition.
10. Ld. Counsel for the Petitioner Companies have filed various affidavits with regard to the sectoral regulators and no corporate debt restructuring. The aforesaid Affidavits are attached as Annexures-22 and 25 of the Petition.
11. The Audited Financial Statement of Petitioner Companies as on 31.03.2023 and Provisional Unaudited Financial Statement of the Petitioner Companies as on 30.09.2023 are attached as Annexures-6 and 10 of the Petition.
12. As per the Scheme, the "Appointed Date" means 01.04.2023 or such other date as the NCLT may direct.
13. In pursuant to the notice, the Regional Director (RD) and the Registrar of Companies (ROC) have filed a Common Report vide Diary No.1057 dated

16.02.2024. Both RD and ROC have raised the following observation vide para II:

- 1) Ujjivan Financial Services Limited, Transferor Company is Holding 73.67% Equity Shares in Ujjivan Small Finance Bank Limited, Transferee Company and hence this is a case of reverse merger.
- 2) Ujjivan Financial Services Limited, Transferor Company holds 100% Preference Shares in Ujjivan Small Finance Bank Limited. Aparna Bandaru, an individual holds majority equity shares of 38.50% in the Transferor Company.
- 3) As per Para 1.3.3 of Part-I of the proposed scheme, the appointed date has been stated to be as 01.04.2023.
- 4) The Transferor Company and Transferee Company are Listed Companies and as per MGT-7 (Annual Return) as on 31.03.2023 filed by the Transferor and Transferee Companies, both the Companies are listed on National Stock Exchange of India Limited and Bombay Stock Exchange Limited. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to show the compliance of SEBI (Listing Obligations and Disclosure Requirements), 2015 and other applicable regulations and obtain No Objection Certificate from SEBI for the merger.
- 5) Report/Comments of SEBI vide letter No.SEBI/HO/CFD/CFD-RAC-DCR2/P/OW/2024/3274/1 dated 19.01.2024 received on 30.1.2024, stating that SEBI has already provided its comments on scheme of amalgamation between Ujjivan Financial Services Limited and Ujjivan Small Finance Bank Limited on 08.03.2023 and enclosed the copy of the same dated 08.03.2023 addressed to Assistant Manager, Corporation Finance Department, Registration, Approvals & correspondences, Division of Corporate Restructuring-2 and NSE, Mumbai and copy to BSE, Mumbai (copy enclosed). Hon'ble Tribunal may be pleased to direct the Petitioner Companies to comply with the comments/observations of SEBI given in their letter dated 08.03.2023 and to file the same before the Tribunal.
- 6) The Transferee Company has Foreign Exchange Transactions. Also both of them have obtained licence from RBI to carryout banking

business. In view of the above Hon'ble Tribunal may be pleased to direct the Company to submit the relevant approvals and compliances made under FEMA/RBI regulations before the scheme is allowed.

- 7) As per clause 4.7 of Part IV of the Scheme, the equity shares held by the Transferor Company in Transferee Company, shall stand cancelled and extinguished and preference shares held by the Transferor Company in the Transferee Company shall stand cancelled and extinguished.
- 8) Being both the Petitioner Companies are listed Companies and regulated by RBI, both the Transferor Company and Transferee Company shall comply with all the requirements of SEBI, Stock Exchanges and RBI. The Official Liquidator in his report dated 25.01.2024 has stated that the RBI and BSE has asked to comply with certain requirements by Transferor Company vide its letters dated 01.02.2023 and 09.03.2023 respectively. The Companies shall comply with all the directions. Transferor Company is RBI regulated NDSI-Core Investment Company, whereas Transferee Company is a Scheduled Commercial Bank. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish the compliance of RBI before the Scheme is allowed.
- 9) It is seen that both the Petitioner Companies have issued certain ESOPs. The employees' rights shall not be affected in any case adversely. Hon'ble Tribunal may be pleased to direct the Petitioner Companies to furnish the measures being taken by them to protect their interests and whether the Companies have received any objections to the Scheme from them.
- 10) The Authorised Share capital of the Transferee Company may not be adequate to issue shares to the shareholders of the Transferor Company on post sanction of the scheme. Hon'ble Tribunal may be pleased to direct the Transferee Company to furnish an undertaking that the Company will increase its Authorised Share Capital adequately and to file the relevant forms with the Registrar of Companies.
- 11) As per the Independent Auditor's Report of Transferor Company for

the Financial Year ending 31.03.2023, the Company has outstanding disputed dues to the tune of Rs.1.18 crores towards Income Tax. Hon'ble Tribunal may be pleased to direct the Petitioner Company to furnish an undertaking to Hon'ble NCLT to the effect that it will settle the dues as and when the claim is crystallized.

12) Clause 4.4 of Part IV of the Scheme provides for Clubbing of Authorized Capital wherein it is stated that the authorized share capital of the Transferee Company shall automatically stand increased without any payment of stamp duty and fees. This term in the Scheme is not in line with the provisions of Section 232(3)(i) of the Companies Act, 2013. Hon'ble Tribunal may be pleased to direct the Transferee Company to comply with the provisions of the Section and pay the difference of fee, after setting off the fee already paid by the Transferor Company on its respective capital.

13) As per Section 240 of the Companies Act, 2013, the liability in respect of offences committed under the Companies Act by the Officers in default of the Transferor Company prior to merger, amalgamation or acquisition shall continue after such merger, amalgamation, or acquisition.

14. Subsequently, reply affidavit to the Common Report of RD & ROC have been filed by the Petitioner Companies vide Diary No.1142 dated 20.02.2024, *inter alia* stating as under:-

- i. **Reply to para II (1) of the ROC & RD report:** This observation is factual and correct (except that as on date, the equity shareholding stake of Transferor Company in Transferee Company is 73.55%), and there is nothing required to be traversed.
- ii. **Reply to para II (2) of the ROC & RD report:** This observation is factual and correct, and there is nothing required to be traversed. The observation that "*Aparna Bandaru, an individual holds majority equity shares of 38.50% in the Transferor Company*" is factually incorrect and is a clerical error in the Report.
- iii. **Reply to para II (3) of the ROC & RD report:** This observation is factual and correct, and there is nothing required to be traversed.

- iv. **Reply to para II (4) of the ROC & RD report:** The Petitioner Companies confirm that both are respectively in compliance with SEBI (Listing Obligations and Disclosure Requirements), 2015 and other applicable regulations. Further, National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange Limited (BSE) had issued their observation letters dated March 9, 2023, after receiving the comments from SEBI vide its letter dated March 8, 2023. The Petitioner Companies hereby undertake to comply with the applicable requirements as stated in the said letters of stock exchanges.
- v. **Reply to para II (5) of the ROC & RD report:** The Petitioner Companies submit that both BSE and NSE had provided their observation letter dated March 9, 2023, based on the comment received from SEBI vide its letter dated March 08, 2023. The Petitioner Companies hereby undertake to comply with the applicable requirements as stated in the aforesaid letters.
- vi. **Reply to para II (6) of the ROC & RD report:** It is submitted that the Transferor Company is RBI regulated ND-SI-Core Investment Company whereas Transferee Company is a scheduled Commercial Bank. Both the Petitioner Companies confirm that all the FEMA /RBI regulations, applicable to them respectively, are in order. Further, the RBI vide its letter dated February 1, 2023, has provided its NOC to the Transferee Company on the Scheme of Amalgamation. The Transferee Company hereby undertake to comply with the applicable requirements as stated in the said RBI letter.
- vii. **Reply to para II (7) of the ROC & RD report:** This observation is factual and there is nothing required to be traversed.
- viii. **Reply to para II (8) of the ROC & RD report:** The Petitioner Companies hereby undertake to comply with the applicable requirements as stated in the letters dated March 9, 2023 received from stock exchanges (i.e. BSE and NSE) based on the SEBI letter dated March 8, 2023. The Transferee Company hereby undertake to comply with the applicable requirements as stated in the letter dated February 1, 2023 of the RBI whereby RBI has provided its no objection to the Scheme of Amalgamation. The Petitioner Companies hereby undertake



to comply with the applicable requirements of SEBI, stock exchanges and the RBI.

- ix. **Reply to para II (9) of the ROC & RD report:** As referred under para 4.8.1 of the Scheme of Amalgamation, *“the Transferee Company shall issue stock options to Eligible Employees taking into account the Share Exchange Ratio and on the same terms and conditions as (and which are not less favourable than those) provided in the Transferor Company Option Scheme.”* Accordingly, upon the Scheme becoming effective, the interest of the ESOP holders of the Transferor Company would be duly taken care of, and the Transferee Company hereby undertakes that it shall not take any action which is detrimental to ESOP holders of the Transferor Company. Further, the Petitioner Companies hereby confirm that none of the ESOP holders have conveyed any objection to the Scheme.
- x. **Reply to para II (10) of the ROC & RD report:** It is submitted that, the Transferee Company hereby confirms that its existing Authorised Share Capital will be sufficient and adequate on standalone basis to issue equity shares to the shareholders of the Transferor Company on post sanction of the Scheme since the equity shares to be issued to the shareholders of the Transferor Company will be less than the equity shares which are held by Transferor Company in the Transferee Company and upon the Scheme becoming effective, the equity shares held by the Transferor Company in Transferee Company, shall stand cancelled and extinguished without any further act, application or deed. Further, also submit that as provided in clause 4.4.1 of the Scheme, as an integral part of the Scheme and upon this Scheme becoming effective, the authorized share capital of the Transferor Company shall stand transferred to and be amalgamated/combined with the authorized share capital of the Transferee Company. Hence, the Authorised Share Capital of the Transferee Company will increase from present Rs.2,500 crores to 2,625 Crores and shall be sufficient and adequate to issue shares to the shareholders of the Transferor Company.

- xi. **Reply to para II (11) of the ROC & RD report:** As referred under para 4.1.2 (s) of the Scheme of Amalgamation, “*all taxes (including but not limited to advance tax, tax deducted at source, minimum alternate tax, withholding tax, banking cash transaction tax, securities transaction tax, taxes withheld/paid in a foreign country, value added tax, sales tax, service tax, goods and services tax, customs, duties, etc.), including any interest, penalty, surcharge and cess, if any, payable by or refundable to the Transferor Company, including all or any refunds or claims shall be treated as the tax liability or refunds/claims, as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, exemptions, credits, holidays, remissions, reductions etc., as would have been available to the Transferor Company, shall pursuant to this Scheme becoming effective, be available to the Transferee Company.*” Accordingly, taxes if any, payable by or refundable to the Transferor Company, including all or any refunds or claims shall be treated as the tax liability or refunds/claims, as the case may be of the Transferee Company. The Transferee Company, accordingly, undertakes to settle outstanding disputed dues, as referred in the auditor’s report of Transferor Company for the financial year ending March 31, 2023, as and when the claim is crystallized.
- xii. **Reply to para II (12) of the ROC & RD report:** The Transferee Company undertakes to ensure the compliance of Section 232(3)(i) of the Companies Act, 2013 and undertakes to pay the difference of fee, if any, upon clubbing of Authorized Share Capital of Transferor Companies with Transferee Company, after setting off the fee and stamp duty already paid by the Transferor Company on its authorised share capital.
- xiii. **Reply to para II (13) of the ROC & RD report:** The provisions of Section 240 of the Companies Act, 2013 have been indicated in this observation, which are self-explanatory, and there is nothing to be traversed for the same.
15. The Official Liquidator (OL) has filed its report, vide Diary No.570 dated 29.01.2024, *inter-alia* stating as under:
1. TR and TE Company are registered in the State of Karnataka. This

report is in respect of TR Company only which is prepared based on the published financial statements and documents/details furnished by the Petitioner TR Company. Besides, being a listed Company to examine the scheme and financials, Panel Chartered Accountant has been engaged and her report is enclosed to this report.

2. That the TR Company is incorporated on 28.12.2024 whereas TE Company is incorporated on 04.07.2016.
3. As per the scheme proposed, the merger of TR and TE is for meeting of dilution of shareholding guidelines requirements of RBI.
4. As per the reply submitted, the TR Company is a non-operational holding Company with no-operation other than its investments in its subsidiary i.e. TE company.
5. The authorized and paid capital of TR Company is Rs.12,50,00,000 and Rs.12,17,58,880 respectively.
6. TR Company is a holding Company of TE Company holding 73.60% of its paid-up equity share capital and 100% of the total paid-up preference share capital of the TE Company. This is a case of reverse merger.
7. The appointed date proposed is 01.04.2023. TR Company has filed its Balance Sheet as at 31.3.2023 with the ROC.
8. In TR Company, no charge is pending as per charge register/master data maintained by MCA/ROC.
9. It is observed that TR Company has availed huge loan from various financial institutions in the past and as per charge register/master data maintained by ROC all have been satisfied. As on date no charges is pending.
9. The Scheme has been approved by the Board of Directors of TR Company in the meeting held on 14.10.2022. The meeting of equity share holder of TR Company was held on 03.11.2023 and the meeting of Unsecured Creditors of TR Company has been dispensed with by NCLT vide its Order dated 8.9.2023. There are no creditors in the Company as such.
10. Being listed Companies and being regulated by RBI, both the TR Company and TE Company shall comply with all the requirements

of SEBI, stock exchanges and RBI. The RBI and BSE had asked to comply with certain requirements by TR Company vide its letters dated 01.02.2023 and 09.03.2023 respectively. The Companies shall comply with all the directions. TR Company is RBI regulated ND-SI-Core investment Company whereas TE Company is as a scheduled Commercial Bank.

11. Exchange ratio proposed in the scheme is:-
 

*“116 equity shares of Ujjivan Small Finance Bank Ltd of Rs.10/- each fully paid up for every 10 equity shares held in Ujjivan Financial Services Ltd of Rs.10/- each fully paid up.”*
12. TE Company does not hold any shares in TR Company. In TR Company 4% shares are held by NRI's, 7.04% shares by Financial Institutions, 35.37% by FII's/FPI's and 53.52% by General Public. So it can be said that public is substantially interested in the affairs of the TR Company.
13. In the TE Company total 73.60% shares are held by TR Company and remaining 26.40% shares are held by others. Additionally, 100% preference shares of TE Company are held by TR Company.
14. In the TR Company there is an ESOP scheme. Upon merger, the scheme will be extinguished. The new scheme will be introduced by the TE Company including for TR Company ESOP holders. If the scheme is allowed, the TE Company shall not do any action which is detrimental to ESOP holders of TR Company.
15. As new shares shall be issued to foreign shareholders and hence the TR Company has to comply with FEMA Regulations.
16. After merger, there will be an income tax out flow impact on TE Company, even if both TR and TE are profit making and income tax payment Companies.
17. As per the Petition, NOC from RBI, BSE and NSE have been received for the proposed scheme.
18. The TE Company upon merger shall comply with all the guidelines issued by the RBI as for as acquisition/purchases of shares by the NRI/FII including Acquisition and Holding of shares or voting rights in Banking companies guidelines dated 01/11/2023.
19. Further, the petitioner shall comply with all the directions given by

NSE and. BSE vide their letters dated 9.3.2023.

20. There are many cases pending at various courts states in different states. Upon merger, TE Company has to represent properly in the cases for a logical end.
  21. An undertaking may be obtained from the Applicant Companies that they will pay applicable stamp duty and other charges to the State Government within a reasonable time with an outer line of 6 months.
  22. No Employees of Transferor Company to be retrenched/terminated upon merger of Transferor Company with Transferee Company. The Hon'ble Tribunal may kindly see that TR or TE will not retrench Swap the staff or employee of Transferor Company in the guise of surplus staff on account of merger. Need to give a separate undertaking by the Transferee Company in this regard.
  23. That for the scrutiny of the books of accounts and records of Transferor Company, the Official Liquidator has engaged N. Tatia & Associates Chartered Accountant, from the panel approved by the Hon'ble High Court of Karnataka having office at 85/1, CBI Main Road, 2<sup>nd</sup> Floor, 10<sup>th</sup> Cross, Ganganagar, Opp. Bank of Baroda, Bengaluru – 560 024.
  24. That the said Chartered Accountant, has submitted her report on Transferor Company with the Official Liquidator on 23.01.2024. The Chartered Accountant's reports regarding TR Company may be treated as part and parcel of this report.
16. The reply affidavit to the report of the Official Liquidator has been filed by the Petitioner Companies vide Diary No.1071 dated 16.02.2024, *inter alia*, stating as follows:
1. It is submitted that observations from Paragraphs 1 to 9, 11, 12, 13, 16, 17, 23 and 24 of the Report of Official Liquidator are correct and are facts on record, hence there is nothing to be responded therein.
  2. **Reply to Para No.10 of the OL report:** The Petitioner Companies hereby undertake to comply with the applicable requirements as stated in the letters dated March 9, 2023 of SEBI and stock exchanges (i.e. BSE and NSE). The Petitioner Company No.2 undertake to comply

with the applicable requirements as stated in the letter dated February 1, 2023 of the RBI.

3. **Reply to Para No.14 of the OL report:** As referred under para 4.8.1 of the Scheme of Amalgamation, “*the Transferee Company shall issue stock options to Eligible Employees taking into account the Share Exchange Ratio and on the same terms and conditions as (and which are not less favourable than those) provided in the Transferor Company Option Scheme.*”

Accordingly, upon the Scheme becoming effective, the interest of the ESOP holders of the TR Company would be duly taken care of, and the Transferee Company/Petitioner Company No.2 hereby undertakes that it shall not do any action which is detrimental to ESOP holders of Transferor Company.

4. **Reply to Para No.15 of the OL report:** It is submitted that as per para 4.6.13 of the Scheme of Amalgamation wherein it has been stated that “*the Transferee Company shall comply with relevant and applicable rules and regulations including provisions of Foreign Exchange Management Act, 1999 while issuing New Equity Shares to non-residents.*”

Accordingly, the Transferee Company/Petitioner Company No. 2 undertake to comply with relevant applicable provisions of Foreign Exchange Management Act, 1999 while issuing New Equity Shares to non-residents.

5. **Reply to Para No.18 of the OL report:** The Transferee Company/Petitioner Company No. 2 undertake to comply with all the guidelines issued by the RBI with respect to acquisition and holding of shares or voting rights in Banking Companies, including with respect to acquisition/purchases of shares by the NRI/FII, as applicable.
6. **Reply to Para No.19 of the OL report:** The Petitioner Companies hereby undertake to comply with the applicable requirements as stated in the letters dated March 9, 2023 of SEBI and stock exchanges (i.e. BSE and NSE).
7. **Reply to Para No.20 of the OL report:** As referred in para 4.1.2 (h) of the Scheme of Amalgamation, “*any pending suits/appeals, all legal,*

*taxation or other proceedings including before any statutory or quasi-judicial authority or tribunal or other proceedings of whatsoever nature relating to the Transferor Company, whether by or against the Transferor Company, whether pending on the Appointed Date or which may be instituted any time in the future, shall not abate, be discontinued or in any way prejudicially affected by reason of the amalgamation of the Transferor Company or of anything contained in this Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued, prosecuted and/or enforced by or against the Transferor Company, as if this Scheme had not been implemented.”*

Accordingly, upon the Scheme becoming effective, the Transferee Company/Petitioner Company No. 2 undertakes to represent properly in all pending cases; and for pending cases related to Transferor Company, the Transferee Company shall represent as if such cases are continuing for Transferee Company.

8. **Reply to Para No.21 of the OL report:** The Petitioner Companies hereby undertake to comply with the requirements of payment of applicable stamp duty and any other applicable charges within 6 months from the date of receipt of order of this Tribunal sanctioning the Scheme of Amalgamation.
9. **Reply to Para No.22 of the OL report:** As per para 4.1.2 (n) of the Scheme of Amalgamation wherein it is stated that “ *all the staff and employees of the Transferor Company who are in such employment as on the Effective Date shall become, and be deemed to have become, the staff and employees of the Transferee Company, without any break or interruption in their services and on the same terms and conditions (and which are commercially not less favourable than those) on which they are engaged by the Transferor Company as on the Effective Date.*”

Accordingly, as also stated in the Scheme, the Transferee Company/Petitioner Company No. 2 hereby undertake that it will not retrench or swap the staff or employee of Transferor Company in the guise of surplus staff on account of amalgamation.

10. It is noticed that **in respect of para 23 of the OL report**, Chartered Accountant has concluded in his report that after examining the books and records of the Transferor Company there are no serious allegations against the Transferor Company; and the Statutory Auditors have not given any qualifications in their reports on Books of Accounts for the Financial Year 2022-23. Further, they have concluded as under:

- i. On the examination of the Books of Accounts and records of the Transferor Company and as per the explanation and information provided by the Transferor Company, they reported as under:
  - a. We have obtained all the information and explanation, which to the best of our knowledge and belief were necessary for the purpose of scrutiny of books and papers of Transferor Company.
  - b. In our opinion, proper books of accounts, papers, statutory registers, minutes and other related records as required by law have been kept by the Transferor Company as far as appears from our examinations.
- ii. On scrutiny of books of accounts, papers, statutory registers, minutes and other related records of the Company, we are of the opinion that the affairs of the Company have not been conducted in a manner prejudicial to the interest of the members of the Company or public interest as per Section 232 of the Companies Act, 2013.

17. The Income Tax Department has filed its report for the Transferor Company vide Diary No.1317 dated 27.02.2024, wherein it has pointed out as under:

1) Outstanding dues:

Sl. No.	A.Y.	Demand u/s.	Date of Order	Demand Outstanding (In Rs.)
1	2017-18	154	23.03.2020	94,61,940
2	2018-19	1150	04.03.2021	189
3	2018-19	143(3)	04.03.2021	5,70,330

- 2) Proceedings pending: N/A.
- 3) Objection for merger or demerger: The outstanding demands needs to be settled prior to any demerger.
- 4) Unlawful tax planning or tax avoidance: None



5) Details of return of income filed: As per e-filing portal, latest ITR has been filed up to AY 2022-23 declaring gross total income of NIL. All tax assessment proceedings and appeals of whatsoever nature, by or against the transferor company, pending or arising as at the effective date shall be continued and/or enforced against the Transferee Company. The department reserves its right to determine the tax implications of the Transferor Company contemplated under the scheme in accordance with the provisions of the IT Act, 1961 and the provisions under the Act shall prevail over anything contrary provided under the scheme.

18. Reply affidavit to the report of Income Tax Department has filed by the Transferor Company vide Diary No.1070 dated 16.02.2024, *inter alia* stating as under:-

- i. That observations made in Income Tax report under paragraph(s) 2, 4 and 5 are facts on record, and hence there is nothing to be responded therein.
- ii. **Reply to Para No.1 of the IT Dept., report:** It is submitted that the outstanding due is Rs.94,61,940/- as per (2017-18). Transferor Company filed an Appeal with CIT (A) against the disallowance made u/s.14A on grounds that no dividend income or exempt income was received during the Financial Year 2016-17 to which provisions of Section 14A is applicable and hence there cannot be any expense being incurred for disallowance u/s.14A and awaiting order/hearing from IT Dept.

**The outstanding dues is Rs.189 as per (2018-19).** Though the Transferor Company disagreed with demand on online submission however, considering materiality, it can be adjusted against refund for future assessment years.

**The outstanding dues is Rs.5,70,330 as per (2018-19).** Transferor Company hereby confirms that this demand was adjusted against the refund receivable for the AY 2023-24. Intimation received from Income Tax Department on Jan 24, 2024, to this effect.

- iii. **Reply to Para No.3 of the IT Dept., report:** It is submitted that in para 4.1.2. (h) of the Scheme of Amalgamation *"any pending suits/appeals, all legal, taxation or other proceedings including before any statutory or quasi-judicial authority or tribunal or other proceedings of whatsoever nature relating to the Transferor Company, whether by or against the Transferor Company, whether pending on the Appointed Date or which may be instituted any time in the future, shall not abate, be discontinued or in any way prejudicially affected by reason of the amalgamation of the Transferor Company or of anything contained in this Scheme, but the proceedings shall continue and any prosecution shall be enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued, prosecuted and/or enforced by or against the Transferor Company, as if this Scheme had not been implemented"*.

Further, as referred under para 4.1.2 (s) of the Scheme of Amalgamation, *"all taxes (including but not limited to advance tax, tax deducted at source, minimum alternate tax, withholding tax, banking cash transaction tax, securities transaction tax, taxes withheld/paid in a foreign country, value added tax, sales tax, service tax, goods and services tax, customs, duties, etc.), including any interest, penalty, surcharge and cess, if any, payable by or refundable to the Transferor Company, including all or any refunds or claims shall be treated as the tax liability or refunds/claims, as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, exemptions, credits, holidays, remissions, reductions etc., as would have been available to the Transferor Company, shall pursuant to this Scheme becoming effective, be available to the Transferee Company"*.

Accordingly, upon the Scheme becoming Effective, all

tax proceedings related to Transferor Company, shall continue by or against Transferee Company in the same manner and to the same extent as would or might have been continued by or against the Transferor Company, as if this Scheme had not been implemented.

Further, taxes if any, payable by or refundable to the Transferor Company, including all or any refunds or claims (including the aforesaid outstanding demands indicated in the report by Deputy Commissioner) shall be treated as the tax liability or refunds/claims, as the case may be of the Transferee Company.

19. Income Tax Department (IT) has filed its report for the Transferee Company vide Diary No.1293 dated 27.02.2024, wherein it is stated that there is tax demand pending for recovery from the Applicant Company of Rs.27,69,63,110/-. Further, as per records, no proceedings are pending against the Company under the Income Tax Act. Hence, they have no objection in the proposed Scheme of Amalgamation.
20. Reply affidavit to the report of Income Tax Department has filed by the Transferee Company vide Diary No.1072 dated 16.02.2024, *inter alia* stating as under:-
  - (i) **Reply to Para No.4 of the IT Dept., report:** As per the below table giving the year wise status of the pending demands. It is further stated that upon the Scheme becoming effective, the Transferee Company shall continue to exist and accordingly the tax proceedings relating to the Transferee Company shall continue in the same manner and to the same extent, as if this Scheme had not been implemented, and the tax liability, if any payable, (including in relation to aforesaid tax demands indicated in the report of the Assistant Commissioner), shall be paid by Transferee Company.  
The year wise status of the demands as follows:

Assessment Order u/s	Assessment Year	Demand Amount	Status	Key reasons for rectification/ appeal application filed
143(3)	2017-18	15,56,650	Application for rectification u/s 154 dated December 12, 2019 is pending before Income Tax Authority.	1. Deferred tax not allowed in MAT calculation 2. Mismatch in loss to be carried forwarded.
143(3)	2018-19	14,79,36,050	Application for rectification u/s 154 dated May 25, 2021 is pending before Income Tax Authority.	1. AO inadvertently added back deferred tax credit twice while computing the total income 2. Tax credit under section 115JAA of INR 1,72,51,699/- has not been granted while computing the MAT in computation sheet.
143(3)	2020-21	12,74,70,410	Application for rectification u/s 154 dated November 4, 2022 is pending before Income Tax Authority. Further, as per Assessment Order dated September 21, 2022, issued under Section 143(3) of Act, and Demand Notice U/s 156 of Act, a demand of Rs.15,98,89,909 was raised. In compliance with memorandum, Bank had remitted Rs.3,20,00,000/- i.e. 20% of the demand amount of Rs.15,98,89,910 (rounded up) vide challan No 30655 dated October 20, 2022. Further Bank has filed an appeal with CIT(A) on 11.10.2022 along with an application for stay of balance demand vide letter dt November 4, 2022.	Appeal pending disposal: 1. Disallowance u/s 80JJAA for Rs.28,30,90,600/- 2. Deduction in respect of Profit from Specified Business u/s 36(1)(viii) for Rs10,52,92,252/-
	<b>Total</b>	<b>27,69,63,110</b>		

21. On 29.02.2024, the following Order was passed:

*“...2. Ld. Counsel for the ROC submits that he has filed its Report vide Diary No.1057 dated 16.02.2024 and the Ld. Counsel for the Petitioner has filed his Reply to the Report submitted by the ROC vide Diary No.1142 dated 20.02.2024. The same are taken on record. Ld. Counsel for the ROC submits that there is no further observations to the reply filed by the Ld. Counsel for the Petitioner.”*

22. Heard the Ld. Counsel appearing for the Petitioner Companies, Ld. Counsel for the ROC/RD, IT Department and the Official from the office of OL. We have carefully perused the pleadings of the parties and the Law and fact on the issue.

23. The reports of the ROC, RD, OL and IT Dept., for the Petitioner Companies are taken on record. Similarly, reply filed by the Petitioner Companies to the above mentioned reports are also taken on record. In view of the above discussion, we conclude that the objections/observations to the Scheme received from RD/ROC, OL and IT Department have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
24. The Scheme in question as annexed at **Annexure-1 is approved with the Appointed Date being 01.04.2023** and thus we hereby declare that the same is binding on all the shareholders and creditors of the Transferor as well as Transferee Companies. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law.

**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the Petitioner Company do, within 30 days after the date of receipt of this Order, cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Petitioner Company shall deposit an amount of Rs.75,000/- with the “Pay & Accounts Officer, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad” and Rs.25,000/- in favour of “The Prime Minister’s National Relief Fund”, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) The Petitioner Company are directed to make compliance to the provisions of Section 170A of the Income Tax Act, 1961 within the stipulated period of time.

- (iv) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (v) The approval/sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.
- (vi) The Petitioner Companies are directed to make necessary compliance with regard to the undertaking given in response to the RBI's letter dated 01.02.2023 and also to the SEBI/NSE observations dated 09.03.2023.
- (vii) The Petitioner Companies have given various undertaking in response to observations made in ROC/RD, IT Dept., & OL reports. They are directed to ensure compliance of the same.

25. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Company on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company by way of affidavit of the Transferor Company respectively.

26. Accordingly, **C.P. (CAA)No.44/BB/2023** is disposed of. Copy of this Order be communicated to the Ld. Counsel for the Petitioner Companies.

**-Sd-**  
**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**-Sd-**  
**(K. BISWAL)**  
**MEMBER (JUDICIAL)**