

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

Company Application (CAA) No. 56/KB/2024

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

IN THE MATTER OF:

A Scheme of Arrangement (First Motion):

ITC LIMITED, a Company incorporated under the Indian Companies Act, 1882, and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. L16005**WB**1910PLC001985 and its registered office at Virginia House, 37 Jawaharlal Nehru Road, Kolkata 700 071, West Bengal.

... Applicant No. 1/ Demerger Company.

And

ITC HOTELS LIMITED, a Company incorporated under the Companies Act, 2013, having Corporate Identification No. U55101**WB**2023PLC263914 and its registered office at Virginia House, 37 Jawaharlal Nehru Road, Kolkata 700 071, West Bengal.

... Applicant No. 2/ Resulting Company.

And

IN THE MATTER OF:

1. ITC Limited (Demerger Company)
2. ITC Hotels Limited (Resulting Company)

... Applicants.

Date of Pronouncement: April 22, 2024.

CORAM:

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

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

Company Application (CAA) No. 56/KB/2024

Appearance:

For the Applicants:

Mr. S.N. Mookherjee, Senior Advocate and Bar-at-Law;

Mr. D. N. Sharma, Advocate;

Mr. Aniket Agarwal, Advocate on Record;

Mr. Yash Singhi, Advocate.

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court congregated through a hybrid mode.
2. The Learned Senior Counsel Mr. S.N. Mookherjee along with Learned Counsel Mr. D. N. Sharma, Mr. Aniket Agarwal, and Mr. Yash Singhi were heard at length.
3. The instant application has been preferred in the first stage of the proceedings under Section 230(1) read with Section 232(1) of the Companies Act, 2013 (for brevity “**Act**”) for orders and directions with regard to meetings of shareholders and creditors in connection with the Scheme of Arrangement between **ITC Limited**, hereinafter referred to as **Demerged Company/** “Applicant No. 1” and **ITC Hotels Limited**, hereinafter referred to as “**Resulting Company**”/ “**Applicant No. 2**” and their respective shareholders, whereby and whereunder the Hotels Business (Demerged Undertaking) of the Demerged Company is proposed to be transferred to and vested in the Resulting Company from the Appointed Date on the terms and conditions fully stated in the said Scheme of Arrangement (hereinafter referred to as “**Scheme**”).
4. The Applicants herein have sought the following reliefs:

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

Company Application (CAA) No. 56/KB/2024

- (a) *That a meeting of the Ordinary Shareholders of the Demerge Company be convened by video conferencing/ other audio-visual means for the purpose of considering, and of through fit, approving, with or without modification, the Scheme of Arrangement.*
- (b) *That direction may be given as to the method of convening, holding and conducting the said meeting the Ordinary Shareholders of the Demerged Company and as to the notices and advertisements to be issued.*
- (c) *That a Chairperson may be appointed for the said meeting of the Ordinary Shareholders of Demerged Company who shall report the results thereof to this Adjudicating Authority.*
- (d) *That meeting of the Equity Shareholders of the Resulting Company to consider the Scheme may be dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013 in view of the consents provided in writing to the proposed Scheme of Arrangement by all the Equity Shareholders of the Resulting Company by way of affidavit.*
- (e) *That meetings of the Unsecured Creditors of the Demerged Company and the Resulting Company to consider the scheme may be dispensed with under Section 230(1) read with Section 232(1) of the Companies Act, 2013 as there is no compromise or arrangement with them in terms of the Scheme and their rights are not affected.*

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

Company Application (CAA) No. 56/KB/2024

(f) *The Applicants be directed to serve notices on the Statutory Authorities pursuant to Section 230(5) of the Companies Act, 2013.*

(g) *Any further order(s) may be deemed fit and proper.*

- 5.** The Learned Senior Counsel, Mr. Mookherjee appearing for the Applicants would submit that the Appointed Date is the same date as the Effective Date or such other date as may be mutually agreed by the Companies. The Effective Date is the date which is the first day of the month following the month in which Companies mutually acknowledge in writing that all the conditions and matters referred to in Clause 28.1 of the Scheme have occurred or have been fulfilled, obtained or waived, as applicable, in accordance with the Scheme. The Scheme is annexed as Annexure “A” at pages 26 to 58 of the application.
- 6.** Further, The Learned Senior Counsel for the Applicants would submit that:
- (a)** The registered offices of the Applicants are situated within the jurisdiction of this Adjudicating Authority.
- (b)** The Board of Directors of the Demerged Company and the Resulting Company at their respective meetings held on 14th August, 2023 by resolutions passed unanimously, approved the said Scheme of Arrangement. The Board Resolutions of the Demerged Company and Resulting Company are annexed as Annexure “G” at pages 739 to 744 of the application.

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

Company Application (CAA) No. 56/KB/2024

- (c) The respective Statutory Auditors of the Demerged Company and the Resulting Company have confirmed that the accounting treatment in the said Scheme is in conformity with the accounting standards prescribed under Section 133 of the Act. The Certificates on such accounting treatment issued by the respective Statutory Auditors of the Demerged Company and the Resulting Company are annexed as Annexure “H” at pages 745 to 753 of the application.
- (d) The Demerged Company is a listed Company while the Resulting Company is an unlisted Company. The Ordinary Shares of the Demerged Company are listed on BSE Limited (“**BSE**”), National Stock Exchange of India Limited (“**NSE**”) and The Calcutta Stock Exchange Limited (“**CSE**”) (hereinafter collectively referred to as **the “Stock Exchanges”**). The Global Depository Receipts of the Demerged Company are listed on the Luxembourg Stock Exchange. The Demerged Company had filed the Scheme with the Stock Exchanges pursuant to SEBI circular no. SEBI/HO/CFD/POD2/P/CIR/2023/93 dated June 20, 2023 (“**SEBI Scheme Circular**”). BSE and NSE by their Observation Letters dated 19th January, 2024 and CSE by its Observation Letter dated 22nd January, 2024 have given their no-objection to the Scheme. The said Observation Letters are annexed as Annexure “K” at pages 766 to 775 of the application.

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

Company Application (CAA) No. 56/KB/2024

- (e) The classes / status of shareholders and creditors of the Applicants are as follows:
- i. **Demerged Company:** Only **one class of shareholders**, viz. Ordinary (Equity) Shareholders and one class of creditors, viz. Unsecured Creditors. The Demerged Company does not have any Secured Creditors. This will appear from the certificate of the Chartered Accountants on the classes of shareholders and creditors of the Applicants which is annexed as Annexure “L” at page 776 of the application.
 - ii. **Resulting Company:** Only **one class of shareholders**, viz Equity Shareholders and one class of creditors, viz Unsecured Creditors. The Resulting Company does not have any Secured Creditors. This will appear from the aforesaid certificate of the Chartered Accountants annexed as Annexure “L” at page 776 of the application.
- (f) The Demerged Company is a listed Company and had **33,35,815 Ordinary Shareholders** as on 31st December 2023. The shareholding pattern of the Demerged Company is annexed as Annexure “M” at pages 777 to 785 of the application. **In the circumstances orders are sought for convening a meeting of the Ordinary Shareholders of the Demerged Company to consider, and, if thought fit, to approve the said Scheme of**

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

Company Application (CAA) No. 56/KB/2024

Arrangement with or without modification. Such meeting is sought to be convened and held through Video Conference (VC) or Other Audio Visual Means (OAVM) in accordance with the Act and framework for holding meetings as prescribed by the Ministry of Corporate Affairs by General Circular No.14/2020 dated 8th April, 2020, as clarified / extended from time to time, including by General Circular No. 17/2020 dated 13th April, 2020 and General Circular No.09/2023 dated 25th September, 2023 (“**Virtual Meeting Circulars**”).

- (g) The Resulting Company is a wholly owned subsidiary of the Demerged Company and has only **7** shareholders. All the shareholders of the Resulting Company **have agreed in writing to the said Scheme of Arrangement by way of affidavits.** A list of shareholders of the Resulting Company is annexed as Annexure “N” at page 786 of the application. The consent affidavits of the shareholders of the Resulting Company are annexed as Annexure “O” at pages 787 to 818 of the application. In the circumstances an order is sought for dispensing with the meeting of shareholders of the Resulting Company under Section 230(1) read with Section 232(1) of the Act.
- (h) **In so far as Unsecured Creditors of the Demerged Company and the Resulting Company are concerned,** it is submitted that the Scheme embodies the arrangement between the Demerged Company and the Resulting Company and their shareholders under Section 230(1)(b)

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

Company Application (CAA) No. 56/KB/2024

read with Section 232(1) of the Act. No change in value or terms or any compromise or arrangement is proposed under the Scheme with any of the Unsecured Creditors of the Demerged Company and the Resulting Company under Section 230(1)(a) read with Section 232(1) of the Act. The Demerged Company and the Resulting Company each have a positive net worth with substantial excess of assets over liabilities and are in a position to meet all their liabilities, as and when they accrue in the ordinary course of business. Further, upon the Scheme coming into effect, the Demerged Company and the Resulting Company will continue to have a positive net worth with substantial excess of assets over liabilities and as such, their assets shall be more than sufficient to discharge their liabilities, as and when they accrue in the ordinary course of business. The pre/post Scheme net worth of the Demerged Company and the Resulting Company as on 31st December, 2023 was as follows:

Sl No	Company	Pre-Scheme Net worth (Rs. Crores)	Post-Scheme Net worth (Rs. Crores)
A.	Net worth of Demerged Company	71,537.69	65,473.15
B.	Net worth of Resulting Company	83.22	10,190.78

- (i) The Unsecured Creditors of the Applicants are not affected in any manner by the Scheme. On the contrary, the

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

Company Application (CAA) No. 56/KB/2024

Scheme will inure to their benefit and is in their interest. Statements of pre-Scheme and post-Scheme net worth of the Demerged Company and the Resulting Company as on 31st December, 2023, certified by Chartered Accountants, are annexed as Annexure “R” at pages 885 to 888 of the application. In the circumstances, it is submitted that there is no requirement of convening and holding of meetings of the Unsecured Creditors of the Applicants as there is no arrangement with them in terms of the Scheme and their rights are not affected under Section 230(1)(a) read with Section 232(1) of the Act. An order is sought for dispensing with the meetings of Unsecured Creditors of the Applicants accordingly. In this regard, the Ld. Sr. Counsel for the Applicants rely, inter alia, on the following precedents:

- i.** Order dated 6th April, 2021 of the Hon’ble Company Law Appellate Tribunal in Company Appeal (AT) No.19 of 2021 [In Re: Ambuja Cements Limited– paras 14, 15, 16, 37 and 39]
- ii.** Order dated 29th February, 2024 of this Hon’ble Tribunal in Company Application (CAA) No.4/KB/2024 [In re: NourishCo Beverages Limited & Ors – paras 2(g) and 3(b)]

Findings:

- 7.** We would rely on the Judgement of ***Ambuja Cements Limited***, reported in **MANU/NL/0128/2021**, wherein the Hon’ble NCLAT therein noted that:

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

Company Application (CAA) No. 56/KB/2024

“the net worth of the Appellant Company is highly positive and there is no Secured Creditors in the Appellant Company. However, there are Unsecured Creditors in the Appellant Company which are only Trade Creditors for an amount of Rs. 1,108 Crores as on 31.03.2020” and;

“that Transferor Company being a wholly owned subsidiary of the Appellant, it need not issue any shares to the shareholders. Hence, the scheme would not result in any dilution in shareholding of the Appellant Company” and further;

“that under the scheme there is no compromise or arrangement with the shareholders or creditors and no sacrifice of any amounts due to the Creditors. Hence, the Scheme would not prejudicially affect the creditors or shareholders of the Appellant Company.”

But where, *“The Learned NCLT rejected the dispensation of the meeting of the Equity Shareholder and the Creditors of the Company for the reason that the Appellant Company i.e., Transferor Company has large no. of shareholders and creditors and none of them have filed their consent and no objection towards the scheme of merger/amalgamation”.*

The Hon’ble NCLAT observed as under, *“We are of the view that from the above scheme the liabilities of the transferor Company will be undertaken by the Appellant Company and there is no dilution in the shareholding of the Appellant Company. From the certificate issued by the*

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

Company Application (CAA) No. 56/KB/2024

Chartered Accountant it seems that the Appellant Company have no secured creditors as on 31.03.2020. Further, it is on record that the net worth Pre- merger of the Appellant Company as per the certificate issued by the Chartered Accountant shows Rs. 22,750.15 Crores. While so, the net worth of Appellant Company post-merger will be Rs. 22,714.77 crores. From the perusal of the certificate issued by the Chartered Accountant the net worth of the Appellant Company is positive.”

The Hon’ble NCLAT set aside the order of NCLT and dispensed with the meetings of the Equity shareholder, Secured and Unsecured Creditors of the Appellant Company.

8. We have also perused the judgement by the Hon’ble High Court of Bombay in the case of ***Mahaamba Investments Ltd. v. IDI Limited reported at MANU/MH/0662/2001***, that:

“In the present case, having regard to the relevant clauses of the proposed scheme and particularly the provision whereby no new shares are sought to be issued to the members of the transferor-company by the transferee-company, the scheme will not affect the members of the transferee-company. The creditors of the transferee-company are not likely to be affected by the scheme in view of the financial position of the transferee-company. In paragraphs 13 and 14 of the affidavit in support of the company application, the financial position of the

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

Company Application (CAA) No. 56/KB/2024

transferor and transferee-companies has been set out and which would show that in so far as the transferor-company is concerned, it has an excess of assets over liabilities to the extent of Rs. 508 lakhs whereas in the case of the transferee-company, there is an excess of assets over liabilities to the extent of Rs. 6,900 lakhs.’

“In the circumstances, the office objection is accordingly disposed of with the clarification that filing of a separate petition by the transferee-company is not necessary, in the facts and circumstances of the present case.”

(Emphasis added)

9. We further rely on the order passed by the Learned NCLT in **Vodafone Idea Ltd. in CA (CAA) 96 of 2019** dated **09.09.2019** held that:

“17. Considering the averments as mentioned above and having considered the entire facts on record that both the Transferor Companies are wholly owned subsidiaries of the Applicant Transferee Company and as no compromise is offered by the Applicant Transferee Company under the Scheme of Amalgamation to the creditors and considering the fact that the net worth of the Companies including the Applicant Transferee Company is positive, it is deemed appropriate to order that meetings of the Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders) of the Applicant Transferee Company are not required to be held and are hereby dispensed with.”

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

Company Application (CAA) No. 56/KB/2024

(Emphasis added)

10. We would further note that under the identical circumstances, dispensation of meeting as sought for, have been allowed by a Coordinate Bench and what is important is that the Tribunal as an institution should tread on the same path and tend not to become a sole crusader or be ploughing a lone furrow. We would refer to the following decisions for the purpose:

- i.** The Hon'ble Supreme Court in the matter of ***Gammon India Ltd. v. Commissioner of Customs Mumbai*** reported in **MANU/SC/0739/2011: (2011) 12 SCC 499 at para 35 & 36**, held that the precedent law must be followed by all concerned, deviation from the same should be only on a procedure known to law. Hon'ble Supreme Court held as under:

“35. It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, Propriety demands that it should place the matter before the President of the Tribunal so that the case is referred

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

Company Application (CAA) No. 56/KB/2024

to a larger Bench, for which provision exists in the Act itself.'

"36. In this behalf, the following observations by a three-Judge Bench of this court in Sub-Inspector Rooplal v. Ltd. Governor are quite apposite: (SCC p. 654, para 12)

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all

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

Company Application (CAA) No. 56/KB/2024

concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A coordinate Bench of a court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.'

"We respectfully concur with these observations and are confident that all the courts and various tribunals in the country shall follow these salutary observations in letter and spirit."

(Emphasis Added)

- ii.** We have further perused the similar circumstances in ***DLF Phase -IV Commercial Developers Ltd. & Ors.***, reported in **MANU/NL/0377/2019** where the NCLAT dispensed with the meetings of the Creditors and shareholders. In the following matter, the written consent was obtained by way of an Affidavit. The Hon'ble NCLAT allowed the Appeal by setting aside the order of the NCLT where the Tribunal rejected the approval seeking the dispensation of the meetings of creditors and shareholders. It was observed that:

"8. Keeping in view the foregoing and all relevant considerations as also the settled law on the subject, the impugned order falling within the purview of per incuriam cannot be supported. The Tribunal should have applied its mind in the light of judicial precedents

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

Company Application (CAA) No. 56/KB/2024

brought to its notice by way of an affidavit, and in the event of the views expressed by the Coordinate or Larger Benches being squarely applicable, followed the same. Such application of mind being abysmally absent, the impugned order is unsustainable and has to be set aside to the extent it relates to directions for convening of the meetings of Unsecured Creditors of Appellant No. 4 and the meetings of the Equity Shareholders, Secured and Unsecured Creditors of Appellant No. 5.

9. The appeal is allowed and the impugned order is set aside to the extent indicated hereinabove and directions passed thereunder. The matter is remanded to the Tribunal for fresh consideration of the first joint motion application preferred by the Applicants/Appellants having regard to the settled position of law and the views and precedents of Coordinate or Larger Benches of the Tribunal. Any observations made in this order shall not be construed as an expression of opinion on the merits of the case.”

- 11.** Further, we would note that the similar view we have taken in ***Halaplay Technologies Private Limited and Openplay Technologies Private Limited*** order dated 31.03.2023 reported at **MANU/NC/1859/2023** that:

*“10. [...] (d) **Meetings of the Unsecured Creditors of the Applicant Companies are dispensed with under Section 230(1) read with Section 232(1) of the Act as it is seen from the Net worth Certificates** issued by the*

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

Company Application (CAA) No. 56/KB/2024

*Chartered Accountant dated January 10, 2023 annexed to the Company Application being Annexure - R at Page 375-376 that the Demerged Company have their Net Worth(s) of Rs. 14,32,46,487/- (Pre-Scheme net worth) and of Rs. 1,81,82,211/- (post-Scheme net worth) and the Resulting Company have their Net Worth(s) of Rs. 18,22,55,956 (Pre-Scheme net worth) and 30,73,14,191/- (post-Scheme net worth). **Thus, for both the Applicant Companies, net worth is highly positive. Further, the proposed scheme is for the Arrangement of demerger and the scheme by way of arrangement does not affect the rights of all the stakeholders of the Applicant Companies and there is no dilution in the Shareholding in the Applicant Companies.***

(Emphasis Added)

Conclusions:

12. We have duly considered the submissions made by the Learned Senior Counsel and perused the records and documents placed before us. In view of such, we allow the instant application and make the following orders:

(a) Meetings dispensed:

- i. Meeting of the Equity Shareholders of the Resulting Company** to consider the Scheme is dispensed with under Section 230(1) read with Section 232(1) of the Act in view of the consents provided in writing in 100% to the proposed Scheme of Arrangement by all the Equity

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

Company Application (CAA) No. 56/KB/2024

Shareholders of the Resulting Company by way of affidavits.

- ii. **Meetings of the respective Unsecured Creditors of the Demerged Company and the Resulting Company** to consider the Scheme are dispensed with under Section 230(1)(a) read with Section 232(1) of the Act. We have perused the Statements of pre-Scheme and post-Scheme net worth of the Demerged Company and the Resulting Company as on 31st December, 2023, certified by Chartered Accountants, are annexed as Annexure “R” at pages 885 to 888 of the application. It is evident that the net worth of ITC Limited pre and post Scheme as at 31st December, 2023 was Rs. 71,537.69 Crore and Rs. 65,473.15 Crore respectively and the net worth of ITC Hotels Limited pre and post Scheme as at 31st December, 2023 was Rs. 83.22 Crore and Rs. 10,190.78 Crore respectively. **Hence, in terms of law laid down in the case laws supra, we are of the considered opinion that as the net worth of both companies are highly positive, thus, the proposed scheme of arrangement by way of demerger does not affect the rights of all the stakeholders of the Applicant Companies and there is no dilution in the Shareholding in the Applicant Companies. Hence, there is no requirement of convening meetings of the**

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

Company Application (CAA) No. 56/KB/2024

Unsecured Creditor of the Applicant Companies as there no compromise or arrangement with them in terms of the Scheme is required and subsequently, and their rights are not affected under Section 230(1)(a) read with Section 232(1) of the Act.

- (b) **Meeting to be held and Date and Time:** **A meeting of the Ordinary Shareholders of the Demerged Company** shall be convened and held at **10:30 a.m. on Thursday, 6th June, 2024** for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification.
- (c) **Mode of meeting:** The meeting of the Ordinary Shareholders of the Demerged Company, as above, shall be convened and held through **VC / OAVM** in accordance with the Act and the framework for holding meetings as prescribed in the Virtual Meeting Circulars.
- (d) **Advertisement:** At least 30 (thirty) clear days before the meeting to be held, as aforesaid, an advertisement of the notice of meeting be published once each in ***The Business Standard*** in English and ***Anandabazar Patrika*** in Bengali as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said advertisement shall, inter alia, state all matters required to be included in the advertisement in accordance with paragraph 1(i)(A)(II) of General Circular No. 17/2020

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

Company Application (CAA) No. 56/KB/2024

dated 13th April, 2020 issued by the Ministry of Corporate Affairs.

- (e) **Individual Notices:** At least 30 (thirty) clear days before the date of the meeting to be held, as aforesaid, notice convening the said meeting, along with all documents required to be sent with the same, including a copy of the said Scheme and statement prescribed under the provisions of the Act disclosing necessary details shall be sent through electronic mode to those Ordinary Shareholders who have registered their e-mail addresses with the Company or with the Depositories. In accordance with the Virtual Meeting Circulars, the said notice along with accompanying documents shall also be made available to all the Ordinary Shareholders who have not registered their e-mail addresses with the Company or with the Depositories by the Demerged Company posting such notice and accompanying documents on the website of the Demerged Company. Additionally, the hard copies of the notice and accompanying documents shall be provided by the Demerged Company to any Ordinary Shareholders who may request for the same. Since the meeting is being held through Virtual Mode, Attendance Slip and Route Map are not required to be annexed to the notice convening the said meeting.
- (f) **Chairperson: Dr. Mamta Binani, Adv. PCS.** [Mobile: +91 9831099551 and Email ID: mamtabinani@gmail.com] is appointed as the Chairperson of the meeting to be held, as

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

Company Application (CAA) No. 56/KB/2024

aforesaid. The Chairperson shall be paid a consolidated sum of **Rs. 1.5 Lakh Only (Rs. One Lakh Fifty Thousand Only)** for conducting the aforesaid meeting as Chairperson.

- (g) **Scrutinizer: Mr. N. Gurumurthy, FCA** [Mobile: +91 9831038621 and Email ID: ngurumurthy@maroti.in] is appointed as the Scrutinizer of the meeting to be held, as aforesaid. The Scrutinizer shall be paid a consolidated sum of **Rs. 1 Lakh Only (Rs. One Lakh Only)** for acting as Scrutinizer.
- (h) **Quorum and Attendance:** The quorum for the said meeting of Ordinary Shareholders of the Demerged Company shall be 30 Ordinary Shareholders present at the meeting in accordance with the Act and the Virtual Meeting Circulars. Attendance at such meeting shall be recorded through electronic mode.
- (i) **Mode of Voting:** The Ordinary Shareholders of the Demerged Company shall have the facility and option of voting on the resolution for approval of the Scheme by casting their votes by e-voting ("**e-voting**") during the meeting or by remote electronic voting ("**remote e-voting**") during the remote e-voting period commencing on **22nd May, 2024 at 9:00 AM (IST) and ending on 5th June, 2024 at 5:00 PM (IST)**. The Ordinary Shareholders of the Demerged Company may opt to exercise their votes only in one mode, i.e., by (a) remote e-

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

Company Application (CAA) No. 56/KB/2024

voting or (b) by e-voting at the meeting. In case they cast their votes by remote e-voting, they will nevertheless be entitled to attend the meeting in accordance with the Act and the Virtual Meeting Circulars and participate in the discussions in the meeting but not to vote again by e-voting at the meeting.

- (j) **Cut-off date:** The cut-off date for determining the eligibility of the Ordinary Shareholders of the Demerged Company to vote and value of votes shall be **17th May, 2024**. The value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- (k) **Agency for e-voting:** The Demerged Company shall engage any of the agencies which are approved by the Ministry of Corporate Affairs under Rule 20 of the Companies (Management & Administration) Rules, 2014 for providing the platform for both remote e-voting and e-voting at the meeting.
- (l) **Authorizations:** Since the meeting is being held in Virtual Mode, physical attendance of Ordinary Shareholders is dispensed with and facility for attending or voting by proxy will not be available. However, an Institutional / Corporate Ordinary Shareholder (i.e. other than individuals, HUFs, NRIs, etc.) desirous of attending and / or voting by e-voting or remote e-voting may do so, provided a duly signed and certified copy of the Board of Directors/ governing body resolution / other document, as the case may be,

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

Company Application (CAA) No. 56/KB/2024

authorizing their representative to attend and / or vote on their behalf is (a) deposited physically at the registered office of the Demerged Company or (b) emailed to the Scrutinizer appointed herein.

- (m) Chairperson to conduct meeting:** The Chairperson appointed for the said meeting or any person authorised by the Chairperson do issue and send the notice of the aforesaid meeting. Further, the Chairperson shall have all other powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 read with the other applicable rules and provisions in relation to conduct of the meeting, including for deciding procedural questions that may arise at the meeting or at any adjournment thereof, or any other matter relating to the meeting, including an amendment to the Scheme, if any, proposed by any person(s).
- (n) Scrutinizer's Report/ Declaration of Results:** The votes cast shall be scrutinized by the Scrutinizer pursuant to Rule 21 of the Companies (Management & Administration) Rules, 2014. The votes cast through remote e-voting and e-voting at the meeting shall be consolidated. It is clarified that the responsibility for issuance of the notices shall be of the Chairperson, or any person authorized by the Chairperson, as aforesaid, and not of the Scrutinizer. The Scrutinizer shall prepare and submit the report on the meeting along with all papers relating to the voting to the Chairperson of the meeting within two working days from

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

Company Application (CAA) No. 56/KB/2024

the conclusion of the meeting. The Chairperson shall declare the results of the meeting after submission of the report of the Scrutinizer. The declared results shall be displayed on the Notice Board of the Demerged Company at its registered office and shall also be posted on its website. Such results shall also be forwarded to the Stock Exchanges where the shares of the Demerged Company are listed.

- (o) **Value:** The value of each Ordinary Shareholder of the Demerged Company shall be in accordance with the Register of Members of the Demerged Company and, where entries in the said Register are disputed, the Chairperson of the meeting shall determine the value for purposes of the said meeting.
- (p) **Date of resolution:** The resolution for approval of the Scheme of Arrangement put to the meeting shall, if passed by a majority in number representing three-fourths in value of the Ordinary Shareholders of the Demerged Company casting their votes through remote e-voting or e-voting at the meeting, as the case may be, shall be deemed to have been duly passed on the date of such meeting under Section 230(1) read with Section 232(1) of the Act.
- (q) **Report on meeting:** The Chairperson shall report to this Tribunal the results of the said meeting within four weeks from the date of the conclusion of the said meeting. Such report shall be in Form No. CAA.4 of the Companies

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

Company Application (CAA) No. 56/KB/2024

(Compromises, Arrangements and Amalgamations) Rules, 2016, verified by affidavit.

- (r) **Confirmation petition:** The Applicants shall file their confirmation petition for sanction of the Scheme under Section 230(6) read with Section 232(3) of the said Act within four weeks from the date of filing of the report of the Chairperson on the meeting.

13. Notice under Section 230(5) of the Act along with all accompanying documents, including a copy of the aforesaid Scheme and statement under the provisions of the Act shall be served on

- (1) The Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata;
- (2) Registrar of Companies, Kolkata;
- (3) Income Tax Department having jurisdiction over the Applicants;
- (4) Competition Commission of India;
- (5) BSE Limited;
- (6) National Stock Exchange of India Limited;
- (7) The Calcutta Stock Exchange Limited;
- (8) The Reserve Bank of India
- (9) Any other statutory authorities (if any)

by sending the same by hand delivery through special messenger, by post and by email. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days from the date of receipt of the notice with a copy

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

Company Application (CAA) No. 56/KB/2024

of such representation being simultaneously sent to the Advocates of the said Applicants. If no such representation is received by the Tribunal within such period, it shall be presumed that such authorities have no representation to make on the said Scheme of Arrangement. Such notice shall be sent pursuant to Section 230(5) of the Act read with Rule 8(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 in Form No. CAA.3 of the said Rules with necessary variations, incorporating the directions herein, within three working days from the last date of sending the notice of meeting to the shareholders, as aforesaid.

- 14.** The Applicants to file affidavit proving services of notices, as aforesaid, within a period of two weeks from the date of dispatch thereof.
- 15.** The Company Application being **C.A. (CAA) No.56/KB/2024** is **disposed of** accordingly.
- 16.** Urgent certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 22nd Day of April, 2024.

Bose, R. K. [LRA]