



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

C.P.(CAA)/7(CB)/2023

Connected with

C.A.(CAA)/2(CB)/2023

In the matter of:

The Companies Act, 2013;

-And-

In the matter of:

An application under Sections 230-232 of the said Act;

-And-

In the matter of:

The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

-And-

In the matter of:

TATA STEEL MINING LIMITED (CIN: U27109OR2004PLC009683), a company incorporated under the Companies Act, 1956 and a public limited company within the meaning of Companies Act, 2013 and having its registered office at Plot No. N-3/24, IRC Village, Nayapalli, Bhubaneswar – 751 015, in the state of Odisha;

...Transferor Company/Petitioner Company

-With-

TATA STEEL LIMITED (CIN: L27100MH1907PLC000260), a company incorporated under the Indian Companies Act, 1882 and a public limited company within the meaning of the Companies Act, 2013 and having its registered office at Bombay House, 24, Homi Mody Street, Fort, Mumbai – 400 001, in the state of Maharashtra;

...Transferee Company

-And-

In the matter of:

TATA STEEL MINING LIMITED

...Transferor Company/Petitioner Company

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CP (CAA) NO. 07/CB/2023
Connected with
CA (CAA) NO. 02/CB/2023
In re: Tata Steel Limited.

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Counsels on Record

: Mr. S.S Mohanty, Adv
Ms. Gyaninee Nayak, Adv.

Order reserved on: 31.07.2023

Order pronounced on:08.08.2023

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Amalgamation of **Tata Steel Mining Limited**, being the “**Transferor Company/Petitioner Company**”, into and with **Tata Steel Limited**, being the “**Transferee Company**” whereby and whereunder the Transferor Company is proposed to be amalgamated into and with the Transferee Company from the **Appointed Date, viz. 1st April, 2023** in the manner and on the terms and conditions stated in the said Scheme of Amalgamation (“**Scheme**”).
2. The Petition has now come up for final hearing. Counsel for the Transferor Company/Petitioner Company submits as follows: -
 - (a) The Scheme was approved unanimously by the Board of Directors of the Transferor Company/Petitioner Company at their meeting held on September 21, 2022.
 - (b) The circumstances and/or grounds that have necessitated and/or justified the Scheme and the advantages thereof as detailed in the Scheme *inter alia* include:
 - (i) The Transferee Company is one of the leading global steel



companies, with over 100 (hundred) years of experience in the steel sector and is a pioneer of steel manufacturing in India. The Transferor Company/Petitioner Company, which is a wholly owned subsidiary company of the Transferee Company, is engaged in *inter alia* the manufacture of ferro-chrome. The amalgamation will consolidate the Transferor Company/Petitioner Company into and with the Transferee Company which will result in focused growth, operational efficiencies, and enhance business synergies. In addition, the resulting corporate holding structure will bring enhanced agility to the business ecosystem of the merged entity.

- (ii) The Transferee Company and the Transferor Company/Petitioner Company believe that the resources of the merged entity can be pooled to unlock the opportunity for creating shareholder value. The Transferee Company and the Transferor Company/Petitioner Company will be able to share best practices, cross-functional learnings, and utilize each other's facilities in a more efficient manner. Marketing and distribution network of the Transferee Company and the Transferor Company/Petitioner Company can be collaborated for both chrome-ore and ferro chrome.
- (iii) The Scheme would result in the following synergies:
 - (a) the Transferor Company/Petitioner Company and Transferee Company are engaged in similar and/or complementary business and proposed amalgamation pursuant to the Scheme will create synergies amongst the business;
 - (b) the proposed amalgamation will result in a simplification of the existing corporate structure and eliminate admirative



duplications, consequently reducing the administrative costs of maintaining separate companies, while reducing the multiple legal and regulatory compliances;

- (c) supply chain infrastructure and network of both entities can be integrated seamlessly which will facilitate in supply lead times leading to better customer service;
- (d) realization of benefits of greater synergies and economies of scale for the business of the Transferee Company due to availability of mining leases and corresponding infrastructure of Transferor Company/Petitioner Company, yielding beneficial results and pooling and optimal utilization of financial resources as well as managerial, technical, distribution and marketing resources of each other;
- (e) reducing time and efforts for consolidation of financials and efficient tax planning at the group level;
- (f) adoption of improved safety, environment and sustainability practices owing to a centralized committee at combined level to provide focused approach towards safety, environment and sustainability practices resulting in overall improvement; and
- (g) create value for stakeholders including respective shareholders, customers, creditors, and employees.

3. The assets of the Transferor Company/Petitioner Company and the Transferee Company are sufficient to meet all liabilities arising upon the amalgamation and that the said Scheme will not prejudicially affect the rights or interests of any of the creditors of the Transferor Company/Petitioner Company and the Transferee Company in any manner whatsoever.

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4. The present Scheme does not contain or provide for any corporate debt restructuring. The present Scheme does not provide for any compromise with the creditors of the Transferor Company/Petitioner Company and the Transferee Company.
5. The Statutory Auditors of the Transferor Company/Petitioner Company Price Waterhouse & Co., Chartered Accountants LLP, and the Statutory Auditors of the Transferee Company, Price Waterhouse & Co., Chartered Accountants LLP, have *vide* their certificates dated September 22, 2022, confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Act.
6. No proceedings are pending under Sections 235 to 251 of the Companies Act, 1956 and Sections 217, 219, 221, 224 and 225 of the Act, against the Transferor Company/Petitioner Company.
7. The shares of the Transferor Company/Petitioner Company are not listed on any of the stock exchanges.
8. This Tribunal has *vide* its order dated April 18, 2023 passed in C.A. (CAA) No. 2/CB/2023, made the following directions with regard to meetings of shareholders and creditors of the Transferor Company/Petitioner Company under Section 230(1) read with Section 232(1) of the Act: -

Meetings dispensed:

- a. Meeting of Equity Shareholders of the Transferor Company/Petitioner Company for considering the Scheme was dispensed with, in view of all shareholders of the Transferor Company/Petitioner Company having respectively given their consent to the Scheme by way of affidavits.
- b. Meeting of Secured Creditors of the Transferor Company/Petitioner Company for considering the Scheme was dispensed with in view of there being NIL Secured creditors of the Transferor Company/Petitioner Company.

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- c. Meeting of Unsecured Creditors of the Transferor Company/Petitioner Company for considering the Scheme was dispensed with in view of 91% in value of Unsecured Creditors of the Transferor Company/Petitioner Company having given consent to the Scheme by way of affidavits.
9. The said order dated April 18, 2023 further directed that no application or proceedings for sanction of the Scheme under Sections 230 and 232 of Companies Act, 2013 are required to be taken by the Transferee Company as the Transferor Company/Petitioner Company is a wholly-owned subsidiary of the Transferee Company and that the Scheme does not involve any compromise or arrangement whatsoever between the Transferee Company and its shareholders or creditors or any other class of persons within the meaning of Sections 230 or 232 of Companies Act, 2013 or any reorganization or restructuring of the capital of the Transferee Company and no shares are to be issued by the Transferee Company.
10. Consequently, the Transferor Company/Petitioner Company presented the instant petition for sanction of the Scheme. This Tribunal admitted the instant petition *vide* an order dated July 3, 2023 and fixed the final hearing on July 31, 2023 upon issuance of notices to the Statutory Authorities and advertisement of date of hearing. In compliance with the said order dated July 3, 2023, the Transferor Company/Petitioner Company has duly served such notices *vide* speed post and email on the Statutory Authorities viz., (i) Regional Director – Eastern Region (Ministry of Corporate Affairs), (ii) the Income Tax Department having jurisdiction, over the Transferor Company/Petitioner Company, (iii) the Official Liquidator, Cuttack, (iv) the Registrar of Companies, Cuttack, (v) Securities and Exchange Board of India, (vi) BSE Limited, (vii) National Stock Exchange of India Limited and (viii) Directorate of Mines, Odisha and has also published advertisements in “*New Indian Express*” in English

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and “*Odia Sambad*” in Odiya in their respective issues dated July 20, 2023. An affidavit of compliance in this regard has also been filed by the Transferor Company/Petitioner Company on July 27, 2023 before this Tribunal.

11. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Transferor Company/Petitioner Company. The Scheme has been made *bona fide* and is in the interest of all concerned.
12. Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”) and the Deputy Commissioner of Income Tax, Circle-1(1), Bhubaneswar (“**Income Tax Authority**”) have filed their representations before this Tribunal.
13. The RD has filed his reply affidavit dated July 19, 2023 (“**RD affidavit**”) which has been dealt with by the Transferor Company/Petitioner Company by way of an Affidavit-in-Rejoinder dated July 27, 2023 (“**Rejoinder**”). The observations of the RD and responses of the Transferor Company/Petitioner Company are summarized as under: -

(a) Paragraph No. 2(a) on page 2 of the RD Affidavit, (a) on page 3 of the RD Affidavit and (b) of the RD affidavit: -

That it is submitted that the Transferee Company, Tata Steel Limited is registered in the State of Maharashtra under the jurisdiction of ROC-Mumbai which is not under the jurisdiction of this Deponent. Hence, this Deponent has no comment on it.

That it is submitted that on the examination of report of the ROC-cum-OL, Cuttack, Odisha, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation so far in respect of Transferor Company, Tata Steel Mining Limited. Further, the said Transferor Company is updated in filing their Financial Statements and Annual Returns for the financial year 31/03/ 2022.

That it is submitted that the Transferor Company is a wholly owned subsidiary of the Transferee Company, and the Equity Shares of the Transferee Company are listed on the NSE and BSE. The Transferor Petitioner Company in a communication submitted that in terms of Regulation 37(6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the requirement of obtaining prior approval of BSE and NSE in case of mergers involving wholly owned subsidiary companies has been dispensed with and only the listed holding Company is required to file the Scheme of Amalgamation with the concerned Stock Exchanges for the purpose of disclosure and hence the NOC is not required from Stock Exchanges in the present Scheme.

Paragraph No. 4(a) of Rejoinder: -

It is stated and submitted that the contents of paragraph 1, paragraph 2(a) on page 2 of the Reply, paragraph 2(a) on page 3 of the Reply and paragraph 2(b) of the Reply are matters of record.

(b). Paragraph No. 2(c) of RD Affidavit: -

The Petitioner Company should be directed to provide list / details of Assets, if any, to be transferred from the Transferor Company to the Transferee Company upon sanctioning of the proposed Scheme.

Paragraph No. 4(b) of Rejoinder: -

With regard to the contents of paragraph 2(c) of the Reply, it is stated and submitted that all the assets of the Transferor Company/Petitioner Company appearing as on April 1, 2023 will be transferred to the Transferee Company. A schedule of assets to be transferred to be transferred from the Transferor Company/Petitioner Company to the Transferee Company is annexed herewith and marked as "Annexure B".

(c) Paragraph No. 2(d) of RD Affidavit: -

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

Paragraph No. 4(c) of Rejoinder: -

With regard to the contents of paragraph 2(d) of the Reply, it is stated and submitted that the Transferee Company shall comply with the provisions prescribed under Section 232(3)(i) of the Companies Act, 2013 as applicable.

Paragraph No. 2(e) of RD Affidavit: -

That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Company to it.

Paragraph No. 4(d) of Rejoinder: -

With regard to the contents of paragraph 2(e) of the Reply, it is stated and submitted that no separate stamp duty is payable for the transfer of immovable properties in the proposed Scheme of Amalgamation. However, in any event, stamp duty is payable in course of implementation of the proposed Scheme of Amalgamation upon receipt of approval of this Hon'ble Tribunal, the Transferee Company undertakes to pay the same.

(d). Paragraph No. 2(f) of RD Affidavit: -

The Hon'ble Tribunal may kindly direct the Petitioners 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.

Paragraph No. 4(e) of Rejoinder: -

With regard to the contents of paragraph 2(f) of the Reply, it is stated and submitted that the Scheme of Amalgamation enclosed with the Company Application and Company Petition are one and the same and that there is no discrepancy, or no change is made.

(e) Paragraph No. 2(g) of RD Affidavit: -

It is submitted that the Income Tax Department vide its letter dated 02/06/2023 made its representation in case of M/s Tata Steel Mining Limited, Transferor Company in the proposed Scheme. In the said letter, it is, inter alia, stated that there

are some demand and proceedings are pending against the Transferor Company.

Paragraph No. 4(f), (g) and (h) of Rejoinder: -

With regard to the contents of paragraph 2(g) of the Reply, it is stated and submitted that, that the Deputy Commissioner of Income Tax, Circle-1(1), Bhubaneswar in light of the order passed by this Hon'ble Tribunal dated July 3, 2023, issued a letter dated July 11, 2023 to this Hon'ble Tribunal in connection with the instant Scheme of Amalgamation with similar content as the letter dated June 2, 2023 issued to the Regional Director, Eastern Region, Ministry of Corporate Affairs. A copy of the letter dated July 11, 2023 addressed to this Hon'ble Tribunal with a copy marked to the Transferor Company/Petitioner Company is annexed herewith and marked as "Annexure C".

In this connection, it is submitted that the contents of the aforesaid letter would indicate, that the demands and penalties have arisen in ordinary course of business and are being dealt with by the Transferor Company/Petitioner Company, as advised and in accordance with law. Further, it is submitted that it is settled law that confirmation of the Scheme of Amalgamation would not mean that this Tribunal is shutting out the legitimate interest of the Income Tax authorities, if any, to recover the lawful dues payable by the Transferor Company/Petitioner Company, as they can proceed against the Transferee Company in accordance with law, if any amount is found due and payable. In this regard, it is germane to place reliance upon Clause 12.2.6 (a) of the Scheme of Amalgamation i.e., Transfer of Legal and other Proceedings, which provides that "any pending suits/appeals, all legal 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 Effective Date or which may be instituted any time in the future, if such proceedings are capable of being continued by or against the Transferee Company, shall not abate, be discontinued or in any way prejudicially be affected by reason of this amalgamation of the Undertaking or because of the provisions contained in this Scheme. The

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proceedings shall continue by or against the Transferee Company in the same manner and to the same extent as they would have been continued, prosecuted and/or enforced by or against the Transferor Company, if this Scheme had not been implemented;’ Clause 12.2.7(d) of the Scheme of Amalgamation i.e. Taxation related provisions provides that “...All tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Company pending and/or arising at the Appointed Date and relating to the Transferor Company shall be continued and/or enforced until the Effective Date by the Transferor Company. In the event of the Transferor Company failing to continue or enforce any proceeding/ appeal, the same may be continued or enforced by the Transferee Company, at the cost of the Transferee Company. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.”

Therefore, the Income Tax authorities are free to pursue their existing claims, if any, against the Transferee Company, and there is no reason why the Scheme of Amalgamation should not be sanctioned.

It is submitted that the Transferor Company/Petitioner Company is in receipt of the letter dated July 11, 2023 issued by the Deputy Commissioner of Income Tax, Circle-1(1), Bhubaneswar at its head office on July 22, 2023 and is in the process of filing an affidavit in response to the same. The Transferor Company/Petitioner Company craves leave to refer to and rely upon the contents of such affidavit at the time of hearing of this petition.

14. The Income Tax Authority in its letter dated April 26, 2023 (“**First Income Tax Authority Representation**”) addressed to this Tribunal, with a copy addressed to the counsel of the Transferor Company/Petitioner Company has stated: -

“Sub: Objection to proposed amalgamation between Tata Steel Mining Limited and Tata Steel Limited

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Refer to mail dated 19.04.2023

Respected Sir/Madam

Please refer to above, in the case of Tata Steel Mining Limited, PAN.AACCR7005H the following demand and proceedings are pending: -

- 1. A.Y. 2020-21 demand outstanding of Rs.27,93,540/-.*
- 2. A.Y. 2021-22 scrutiny assessment u/s.143(3) on progress final order not completed.*
- 3. Penalty u/s.270A for the A.Y. 2017-18 pending.*
- 4. Penalty u/s.270A for A.Y. 2018-19 pending.*

The above facts are hereby brought to the kind notice of the Hon'ble Tribunal for due consideration at the time of hearing of the case."

15. The Income Tax Authority in a further letter dated July 11, 2023 ("**Second Income Tax Authority Representation**") addressed to this Tribunal, with a copy addressed to the Transferor Company/Petitioner Company has stated: -

".....

In this connection, it is hereby informed that on perusal of ITBA system in the case of M/s. Tata Steel Mining Ltd, (AACCR7005H), the following demand and proceedings are pending: -

- i. A.Y. 2021-22 scrutiny assessment u/s.143(3) on progress final order not completed.*
- ii. Penalty u/s. 270A for the AY – 2017-18.*
- iii. Penalty u/s. 270A for AY – 2018-19 pending.*

The above facts are hereby brought to the kind notice of the Hon'ble Tribunal for due consideration at the time of hearing of the case."

The contents of the abovementioned letters have been dealt by the Transferor Company/Petitioner Company by way of separate affidavits.

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The affidavit dated June 16, 2023 has been filed in response to the First Income Tax Authority Representation and affidavit dated July 27, 2023 has been filed in response to the Second Income Tax Authority Representation wherein it has been stated that the demands and penalties have arisen in ordinary course of business and are being dealt with by the Transferor Company/Petitioner Company, as advised and in accordance with law. Further, it is settled law that confirmation of the Scheme would not mean that this Tribunal is shutting out the legitimate interest of the Income Tax authorities, if any, to recover the lawful dues payable by the Transferor Company/Petitioner Company, as they can proceed against the Transferee Company in accordance with law, if any amount is found due and payable. Reliance has been placed upon Clause 12.2.6 (a) of the Scheme i.e., Transfer of Legal and other Proceedings, which provides that “any pending suits/appeals, all legal 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 Effective Date or which may be instituted any time in the future, if such proceedings are capable of being continued by or against the Transferee Company, shall not abate, be discontinued or in any way prejudicially be affected by reason of this amalgamation of the Undertaking or because of the provisions contained in this Scheme. The proceedings shall continue by or against the Transferee Company in the same manner and to the same extent as they would have been continued, prosecuted and/or enforced by or against the Transferor Company, if this Scheme had not been implemented,” Clause 12.2.7(d) of the Scheme i.e. Taxation related provisions provides that “...All tax assessment proceedings/ appeals of whatsoever nature by or against the Transferor Company pending and/or arising at the Appointed Date and relating to the Transferor Company shall be continued and/or enforced

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until the Effective Date by the Transferor Company. In the event of the Transferor Company failing to continue or enforce any proceeding/appeal, the same may be continued or enforced by the Transferee Company, at the cost of the Transferee Company. As and from the Effective Date, the tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Company.”

Therefore, the Income Tax authorities are free to pursue their existing claims, if any, against the Transferee Company, and there is no reason why the Scheme of Amalgamation should not be sanctioned.

16. It has been submitted that despite publication of notice of hearing in newspapers in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016, no other person has filed any opposition or objection before this Tribunal in the instant matter.
17. Heard submissions made by the Ld. Counsel appearing for the Transferor Company/Petitioner Company. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the present Petition and make the following orders: -
 - (a) The Scheme mentioned in the Petition, being Annexure A, is hereby sanctioned by this Tribunal with effect from the Appointed Date fixed as April 1, 2023, and be binding on the Transferor Company/Petitioner Company, Transferee Company and all their shareholders, creditors, other stakeholders and all concerned with effect from the Effective Date as defined in the Scheme;
 - (b) All the properties, rights and interest of the Transferor Company/Petitioner Company be transferred without any further

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act or deed, to the Transferee Company and become the assets and vest in the Transferee Company with all the estate and interest of Transferor Company/Petitioner Company, subject nevertheless to all charges now affecting the same, in accordance with the Scheme and pursuant to Section 232 read with Section 230 of the Companies Act 2013;

- (c) All proceedings and/or suits and/ or appeals now pending by or against the Transferor Companies shall be continued by or against the Transferee Company; however, if any suit, writ petition, investigation appeal, criminal or other proceedings of whatsoever nature is pending against the petitioner Companies or entities associated with petitioner companies, their directors, shareholders, employees etc., the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of business of the Transferor Company or because of anything contained in the scheme, but the proceeding shall continue, prosecuted and enforced by or against the Transferee Company/Transferor Company entities etc. in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Companies and their associated entities, directors, shareholders, employees etc. as if the Scheme had not been made.
- (d) That all the employees of the Transferor Companies in Service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e., the effective date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favorable than those subsisting in concerned Transferor Company on the said date;
- (e) All the liabilities and duties of the Transferor Company/Petitioner

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Company be transferred without further act or deed, to the Transferee Company and the same shall be transferred to and become the liabilities and duties of the Transferee Company, in accordance with the Scheme and pursuant to Section 232 of the Companies Act, 2013;

- (f) All proceedings and/or suit and appeals now pending by or against the Transferor Company/Petitioner Company, if any, shall be continued by or against the Transferee Company, as provided in the Scheme;
- (g) The schedule of assets in respect of the Transferor Company/Petitioner Company be filed within a period of 60 (sixty) days from the date of order made herein;
- (h) The Transferor Company/Petitioner Company shall stand dissolved without winding up in accordance with the Scheme;
- (i) The Transferor Company/Petitioner Company and the Transferee Company do each within 30 (thirty) days of the date of the receipt of certified copy of this order, cause a certified copy to be delivered to their respective/ jurisdictional Registrar of Companies.
- (j) All concerned authorities to act on certified copy of this order along with the sanctioned Scheme.
- (k) The Transferor Company/Petitioner Company shall be at liberty to apply before this Learned Tribunal in the above matter for such directions as may be necessary.

18. The Transferor Company/Petitioner Company shall supply legible computerized printout of the Scheme and schedule of assets and liabilities in acceptable form to the department, the department will append such computerized print-out, upon verification to the certified copy of the order without insisting on a hand-written copy thereof.

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19. Company Petition C.P.(CAA) No. 7/CB/2023 connected with
C.A.(CAA) No. 2/CB/2023 is disposed of accordingly.

20. Certified copy of this order, if applied for, be supplied to the parties,
subject to compliance with all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.08.08 17:40:05 +05'30'

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this, the 08th day of August, 2023.

Supriya_P.S