



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

**C.P. (CAA) NO.140/KB/2024
Connected with
C.A. (CAA) NO.56/KB/2024**

***A Petition under Section 230(6) read with Section 232(3) of the
Companies Act, 2013***

IN THE MATTER OF :

**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. L16005WB1910PLC001985
and its registered office at Virginia House, 37 Jawaharlal Nehru Road,
Kolkata 700 071 in the State of West Bengal**

And

**ITC Hotels Limited, a Company incorporated under the Companies Act,
2013, having Corporate Identification No. U55101WB2023PLC263914
and its registered office at Virginia House, 37 Jawaharlal Nehru Road,
Kolkata 700 071 in the State of West Bengal**

IN THE MATTER OF:

- 1. ITC Limited**
- 2. ITC Hotels Limited**

... Petitioners

**Date of Hearing: 27th September, 2024
Date of pronouncing the order: 4th October, 2024**

CORAM:

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

APPEARANCE:

**FOR THE PETITIONERS: Mr. S.N Mookherjee, Sr. Adv.
Mr. Aniket Agarwal, Adv.**

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ORDER

Per: D. Arvind, 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 Arrangement amongst ITC Limited, being the Petitioner No. 1 abovenamed (“**Demerged Company**”) and ITC Hotels Limited, being the Petitioner No. 2 abovenamed (“**Resulting Company**”) and their respective shareholders (“**Scheme**”), whereby and whereunder the Hotels Business (“**Demerged Undertaking**”, as defined in the Scheme) of the Demerged Company is proposed to be transferred to and vested in the Resulting Company from the Appointed Date, in the manner and on the terms and conditions stated in the said Scheme. The Scheme is annexed as Annexure “A” at pages 26 to 58 of the petition.

2. The Petition has now come up for final hearing. Counsel for the Petitioners submit as follows:-

(a) The Scheme was approved unanimously by the Board of Directors of the Petitioners at their respective meetings held on 14th August, 2023.

(b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, *inter alia*, as follows:-

i. The Demerged Company is a diversified company engaged in various businesses including hotels. The Hotels Business of the Demerged Company includes ownership / licensing / management of several hotel properties and providing services including accommodation, dining, banqueting, etc.

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ii. The Hotels Business of the Demerged Company has matured over the years and is well poised to chart its own growth path and operate as a separate listed entity in the fast-growing hospitality industry whilst continuing to leverage the Demerged Company's institutional strengths, strong brand equity and goodwill. Therefore, the Scheme is being proposed to segregate Hotels Business from the Remaining Business, as defined in the Scheme, of the Demerged Company and demerge it into the Resulting Company. The proposed Scheme would be in the best interests of both the Companies and their respective shareholders, employees, creditors and other stakeholders for the following reasons :

1. The confluence of favourable factors such as rising societal aspirations, strong macro-economic fundamentals of the country, Government of India's thrust on the Travel & Tourism industry and infrastructure creation along with rapid digitalization present immense opportunities for the Hotels Business going forward, though distinct from the other businesses of the Demerged Company.
2. In light of the distinctive profile of the hospitality industry, housing the Hotels Business as defined in the Scheme in a separate listed entity would enable crafting of the next horizon of growth and sustained value creation for shareholders through sharper focus on the business anchored on a differentiated strategy aligned with industry specific market dynamics.
3. The Resulting Company is a newly incorporated entity which will have the ability to raise capital from equity and debt markets towards funding its growth requirements.

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4. The Resulting Company as a focused entity would attract the right sets of investors, strategic partners and collaborations, whose investment strategies and risk profiles are aligned more sharply with the hospitality industry.
 5. The Scheme would unlock value of the Hotels Business for existing shareholders of the Demerged Company through independent market driven valuation of their shares in the Resulting Company which will be listed pursuant to the Scheme, along with the option and flexibility to remain invested in a pure play hospitality focused listed entity.
- (c) The respective Statutory Auditors of the Petitioners have confirmed that the accounting treatment specified in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Act. The said certificates are annexed as Annexure “G” at pages 752 to 760 of the Petition.
- (d) There are no proceedings pending under Sections 210 to 227 of the Act against the Petitioners.
- (e) The Share Entitlement Ratio in consideration of the demerger has been fixed on a fair and reasonable basis, based on the Share Entitlement Ratio Report dated 14th August, 2023 issued by Messrs. PwC Business Consulting Services LLP (IBBI Registered Valuer No.: IBBI / RV-E / 02 / 2022 / 158). The said report is annexed as Annexure “H” at pages 761 to 767 of the Petition.
- (f) Messrs. Kotak Mahindra Capital Company Limited, an independent SEBI registered Category-I Merchant Banker (SEBI Registration No.

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INM000008704) by their Fairness Opinion dated 14th August, 2023, has also opined that the Share Entitlement Ratio is fair and reasonable from a financial point of view to the Shareholders of the Demerged Company. The said Fairness Opinion is annexed as Annexure "I" at pages 768 to 772 of the Petition.

- (g) The Demerged Company is a listed Company while the Resulting Company is presently an unlisted Company. The Ordinary Shares of the Demerged Company are listed on the National Stock Exchange of India Limited ("**NSE**"), BSE Limited ("**BSE**") 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.
- (h) The Demerged Company had filed the Scheme with the Stock Exchanges in terms of the SEBI Master Circular No. SEBI / HO / CFD / POD-2 / P / CIR / 2023 / 93 dated June 20, 2023 ("**SEBI Scheme Circular**") for their approval. NSE and BSE by their respective 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 "J" at pages 773 to 782 of the Petition.
- (i) Approval of the Competition Commission of India ("**CCI**") to the proposed combination by way of demerger of the Hotels Business of the Demerged Company to the Resulting Company had also been sought under the provisions of the Competition Act, 2002. CCI has since approved the proposed combination on 28th May, 2024 under Section 31(1) of the said Act observing that the Demerger is essentially an internal restructuring, is not likely to result in any

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appreciable adverse effect on competition in India. The detailed order issued by CCI is annexed as Annexure “K” at pages 783 to 785 of the Petition.

(j) The classes / status of shareholders and creditors of the Petitioners 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.
- 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.

The certificate of Chartered Accountants on classes of shareholders and creditors of the Petitioners is annexed as Annexure “L” at page 786 of the Petition.

(k) By an order dated 22nd April, 2024 made in Company Application (CAA) No. 56/KB/2024, this Tribunal was pleased, *inter alia*, to:

- (i) dispense with the meetings of the Equity Shareholders of the Resulting Company in view of the consents provided in writing to the proposed Scheme by all (100%) the Equity Shareholders of the Resulting Company by way of affidavits;
- (ii) dispense with the meetings of the respective Unsecured Creditors of the Demerged Company and Resulting Company as there is no compromise or arrangement with them and their rights are not affected; and

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- (iii) direct a meeting of the Ordinary Shareholders of the Demerged Company (“**Meeting**”) to be convened and held on Thursday, 6th June, 2024, at 10.30 a.m. through Video Conferencing (“**VC**”) or Other Audio-Visual Means (“**OAVM**”) for the purpose of considering, and, if thought fit, approving the said Scheme, with or without modification.

A copy of the said order is annexed as Annexure “M” at pages 787 to 812 of the Petition.

- (l) In terms of the said order dated 22nd April, 2024, a notice dated 30th April, 2024 convening the Meeting along with a copy of the Scheme, Explanatory Statement under Sections 230 and 232 read with Section 102 and other applicable provisions of the Act and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and all annexures thereto (“**Notice**”) was sent by e-mail on and from 2nd May, 2024 to 6th May, 2024 to the Ordinary Shareholders of the Demerged Company who had registered their e-mail addresses with the Demerged Company or with the Depositories and whose names were appearing in the Register of Members or Register of Beneficial Owners of the Demerged Company as on 26th April, 2024. In terms of the said order and in accordance with the 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**”), the Notice along with all the accompanying documents was also made available to all the Ordinary Shareholders who had not registered their e-mail addresses (or to whom the Demerged Company

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had sent the Notice at their registered e-mail address but the same could not be delivered despite re-sending), by the posting of such Individual Notice on the website of the Demerged Company at <https://www.itcportal.com/proposed-demerger>. The Notice along with all accompanying documents was also made available to the said Ordinary Shareholders by posting of the same on the website of National Securities Depository Limited at www.evoting.nsdl.com, NSE at www.nseindia.com, BSE at www.bseindia.com and CSE at www.cse-india.com. A copy of the said notice convening the Meeting is annexed as Annexure “N” at pages 813 to 996 of the Petition.

- (m) Pursuant to the said order dated 22nd April, 2024, notice of the Meeting was also advertised once in English in all the editions of the **“Business Standard”** (Ahmedabad, Bengaluru, Bhubaneswar, Chandigarh, Chennai, Hyderabad, Kochi, Kolkata, Lucknow, Mumbai, New Delhi and Pune editions) and once in Bengali in the **“Anandabazar Patrika”**, Kolkata edition in their respective issues dated 6th May, 2024. Copies of the relevant pages of the said newspapers (e-editions) containing the said advertisements are annexed as Annexure “I” at pages 65 to 77 of the Affidavit of Service filed on 20th May, 2024.
- (n) In compliance with Section 230(5) of the Companies Act, 2013 and the said order dated 22nd April, 2024, notice dated 7th May, 2024, along with the Scheme, Explanatory Statement under provisions of the Act and all documents accompanying the same was sent by hand delivery through special messenger, email and speed post between 7th May, 2024 to 9th May, 2024 to the Statutory Authorities, as directed by the said order, including upon the (i) Regional Director, Eastern Region, Ministry of Corporate Affairs, Kolkata; (ii) Registrar of

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Companies, West Bengal; (iii) Income Tax Department having jurisdiction over the Petitioners; (iv) Competition Commission of India; (v) BSE Limited; (vi) National Stock Exchange of India Limited; (vii) The Calcutta Stock Exchange Limited; and (viii) Reserve Bank of India, Kolkata. Affidavit proving service, as aforesaid, has been filed by the Petitioners and uploaded on the NCLT portal on 20th May, 2024. The Notices and proofs of service by speed post, special messenger and e-mail are annexed as Annexures “D”, “E”, “F” at pages 20 to 24, 25 to 51, and 52 to 61 respectively, of the said affidavit of service.

- (o) In compliance with the said order dated 22nd April, 2024, meeting of the Ordinary Shareholders of the Demerged Company was duly held on 6th June, 2024 at 10:30 a.m., through VC/OAVM. Dr. (h.c.) CS & Advocate Mamta Binani acted as the Chairperson of the said Meeting. The Scheme was duly approved by requisite majority by the said Meeting with 1027,43,45,811 votes having been cast in favour of the resolution by 11,843 Ordinary Shareholders and 4,14,54,742 votes having been cast against the resolution by 649 Ordinary Shareholders. Report of the Chairperson on the Meeting of Ordinary Shareholders of the Demerged Company is annexed as Annexure “O” at page 997 to 1183 of the Petition.
- (p) Consequently, the Petitioners presented the instant Petition for sanction of the Scheme. By an order dated 9th August, 2024 as corrected by an order dated 19th August, 2024, the instant petition was admitted by this Tribunal and made returnable on 27th September, 2024.
- (q) In compliance with the said order dated 9th August, 2024 the Petitioners have duly sent a second Notice under Section 230(5) of the Companies Act, 2013 afresh to the aforesaid Statutory Authorities, on 20th August, 2024. Affidavit proving service, as aforesaid, has been

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filed by the Petitioners and uploaded on the NCLT portal on 23rd September, 2024. The Notices and proofs of service by speed post and email are annexed as Annexures “A”, “B” and “C” at pages 7 to 201 of the said affidavit of service filed on 23rd September, 2024.

- (r) Further, the Petitioners in compliance with the said order dated 9th August, 2024 of this Tribunal have also duly published the Notice of Hearing of the Petition once in English in all the editions of the **“Business Standard”** (Ahmedabad, Bengaluru, Bhopal, Bhubaneswar, Chennai, Hyderabad, Kochi, Kolkata, Lucknow, Mumbai, New Delhi and Pune editions) and once in Bengali in the **“Anandabazar Patrika”**, Kolkata edition in their respective issues dated 12th September, 2024. The relevant pages of the aforesaid newspapers (e-editions) containing the aforesaid advertisement published therein are annexed as Annexure “D” at pages 202 to 214 of the aforesaid affidavit of service filed on 23rd September, 2024.
- (s) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made *bona fide* and is in the interest of all concerned.
- 3.** Pursuant to the said advertisements and notices, the Regional Director, Ministry of Corporate Affairs, Kolkata (**“RD”**) and the Income Tax Department have filed their representations before this Tribunal.
- 4.** The RD has made his representation by his Reply Affidavit on 24th September, 2024 (**“RD Affidavit”**). The observation of the RD and the Income Tax Department have been dealt with by the Petitioners by their Rejoinder

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Affidavit on 26th September, 2024 (“**Rejoinder**”). The observations of the RD and responses of the Petitioner are as under:-

A. Paragraph 2(a) of RD Affidavit:

“That it is submitted that on the examination of the report of the Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation. Further, all the petitioner companies are updated in filing their Financial Statements and Annual Returns for the financial year 31/03/2023.”

Response as per Paragraph 5 of Rejoinder:

The contents of paragraph 2(a) of the said Affidavit are admitted.

B. Paragraph 2(b) of RD Affidavit:

“The Scheme provides for the Appointed Date as 'Effective Date' or such other date as may be mutually agreed by the Companies. The 'Effective Date', as defined in the Scheme, means the date which will be the first day of the month following the month in which the Companies mutually acknowledge in writing that all the conditions and matters referred to the Scheme have occurred or have been fulfilled, obtained or waived, as applicable, in accordance with the Scheme.”

Response as per Paragraph 6 of Rejoinder:

The contents of paragraph 2(b) of the said Affidavit are admitted.

C. Paragraph 2(c) of RD Affidavit:

“That it is submitted that the ordinary shares of the Demerged Company i.e. ITC Limited are listed on the National Stock Exchange of India Limited

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(NSE), BSE Limited and the Calcutta Stock Exchange Limited (CSE). The NSE by their 'Observation Letter' vide letter no. Ref. NSE / LIST / 37298-I dated 19.01.2024, the BSE Limited vide its letter no. DCS / AMAL / JP / R37 / 3038 / 2023-24 dated 19.01.2024 and CSE by its 'Observation Letter' vide no. CSE / LD/ 15998 / 2024 dated 22.01.2024 have given their 'No Objection' to the proposed Scheme. Further, the Resulting Company, ITC Hotels Limited is a wholly owned subsidiary of the Demerged Company, ITC Limited and entire shares of the ITC Hotels Limited are held by ITC Limited as the sole registered owner. Copies of such observation letter as issued by the NSE, BSE and the CSE and collectively marked as Annexure-I is enclosed herewith for perusal and ready reference.”

Response as per Paragraph 7 of Rejoinder:

The contents of paragraph 2(c) of the said Affidavit are admitted.

D. Paragraph 2(d) of RD Affidavit:

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

Response as per Paragraph 8 of Rejoinder:

With reference to paragraph 2(d) of the said Affidavit, we state that the Petitioners will duly file the list / details of assets, to be demerged / transferred from the Demerged Company to the Resulting Company upon sanction of the Scheme in the prescribed format, as also sought by the Petitioners in prayer (i) of the petition.

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E. Paragraph 2(e) of RD Affidavit:

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

Response as per Paragraph 9 of Rejoinder:

With reference to paragraph 2(e) of the said Affidavit, we state that the Demerged Company is not being dissolved herein as this is a case of demerger and not amalgamation and hence Section 232(3)(i) of the Companies Act, 2013 (“Act”) is not applicable.

F. Paragraph 2(f) 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 / Demerged Company to the Resulting / Transferee Company.”

Response as per Paragraph 10 of Rejoinder:

With reference to paragraph 2(f) of the said Affidavit, we state that stamp duty consequent to transfer of immovable properties under the Scheme shall be paid, if applicable, by the Demerged Company pursuant to Clause 33 of the Scheme.

G. Paragraph 2(g) 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.

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Response as per Paragraph 11 of Rejoinder:

“With reference to paragraph 2(g) of the said Affidavit, the Petitioners confirm that the Scheme enclosed to the Company Application and the Company Petition are one and same and there is no discrepancy and no change is made.”

H. Paragraph 2(h) of RD Affidavit:

“It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 28/05/2024 for their views / observation in the matter, the authority has not forwarded their report and the same is still awaited.”

Response as per Paragraph 12 of Rejoinder:

“With reference to paragraph 2(h) of the said Affidavit, we state that pursuant to Section 230(5) of the Companies Act, 2013, notice of the Scheme had been duly given on behalf of the Petitioners to the Income Tax Department. Pursuant to such notice, the Income Tax Department has since by its representation dated 22nd July, 2024 given its no objection to the Scheme as follows:-

NOC for both the companies M/s ITC Limited and M/s ITC Hotels Limited is being issued for the said Scheme of arrangement for demerger subject to the condition that the demerged company and the resulting company adhere to all the conditions relating to demerger as defined u/s 2(19AA), 47 and other relevant sections and provisions of the Income-tax Act, 1961. Further, the demerged company and the resulting company need to demonstrate the same at the time of their income- tax assessments

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and taxes, if any, arising from the scheme of arrangement are to be paid to the Government exchequer.

A copy of the said representation is annexed hereto and marked "A". The Petitioners confirm that all conditions relating to demerger as defined u/s 2(19AA), 47 and other relevant sections and provisions of the Income-tax Act, 1961 are adhered to by the Petitioners and the same will also be demonstrated at the time of their income-tax assessments. Further, taxes, if any, arising from the Scheme of Arrangement will be paid to the Government exchequer."

5. Heard submissions made by the Ld. Counsel appearing for the Petitioners and the Joint Director in the Office of R. D. (E. R.), MCA, Kolkata. We are satisfied with explanations given by the Petitioners. The RD has no objection if the scheme is sanctioned. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the Petition and make the following orders : -

- (a) the Scheme mentioned in paragraph 1 of this Petition, being Annexure "A" hereto, is hereby sanctioned by this Tribunal to be binding with effect from the Appointed Date (as defined in the Scheme) on Demerged Company and Resulting Company, their respective shareholders and all concerned;
- (b) all the property, rights and powers (including permits, licenses, approvals, advantages, easements, etc.) of the Demerged Company relating to the Demerged Undertaking, including those described in the Schedule of Assets herein, be transferred from the said Appointed Date, without further act or deed, to the Resulting Company, subject to and in terms of the Scheme. Accordingly, the same shall, pursuant to Section

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232(4) of the Act be transferred to and vest in the Resulting Company, for all the estate and interest of the Demerged Company therein subject to all charges now affecting the same, as provided in the said Scheme;

- (c) all the debts, liabilities, duties and obligations of the Demerged Company relating to the Demerged Undertaking be transferred from the said Appointed Date without further act or deed, to the Resulting Company, and accordingly, the same shall pursuant to Section 232(4) of the Act be transferred to and become the debts, liabilities, duties and obligations of the Resulting Company, subject to and in terms of the Scheme;
- (d) the employees of the Demerged Company who are engaged in or relate to the Demerged Undertaking shall be engaged by the Resulting Company, subject to and in terms of the Scheme;
- (e) all suits, appeals, legal or other proceedings of whatever nature, by or against the Demerged Company in respect of the Demerged Undertaking be continued by or against the Resulting Company subject to and in terms of the Scheme;
- (f) the Resulting Company, without further application, to issue and allot to the shareholders of the Demerged Company, the shares in the Resulting Company to which they are entitled in terms of the said Scheme;
- (g) all other matters covered by the Scheme, including Reduction of Securities Premium Account of the Resulting Company, shall take effect, with effect from the Appointed Date (as defined in the Scheme), subject to and in terms of the Scheme;
- (h) the Demerged Company and the Resulting Company shall within thirty days of the date of the receipt of the certified copy of this order, cause a

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certified copy thereof to be delivered to the Registrar of Companies for registration;

- (i) Leave is hereby granted to the Petitioners to file the Schedule of Assets of the Demerged Undertaking of the Demerged Company in the form as prescribed in the Schedule to Form No. CAA 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within four weeks from the date of receipt of copy of the order to be made herein;
- (j) liberty is reserved to the Demerged Company and the Resulting Company to apply to the Tribunal for any directions that may be necessary for the purpose of carrying out the Scheme.

6. The Petitioners shall supply legible printout of the Scheme and Schedule of Assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

7. Hence, **C.P. (CAA) No. 140/KB/2024** connected with **C.A. (CAA) No. 56/KB/2024** is disposed of accordingly.

8. Certified copy of the order may be issued upon compliance of all requisite formalities.

**D Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on this, the 4th Day of October, 2024

Oindrila, K. (LRA)