

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH KOLKATA, COURT-II**

COMPANY APPLICATION NO: CA (CAA) No. 184/KB/2023

In the matter of:

The Companies Act, 2013;

And

In the matter of:

An application under Section 230 to 232 and other applicable provisions of the Companies Act 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules 2016;

And

In the matter of:

WESTERN INDIA COMMERCIAL COMPANY LIMITED (CIN: L67120WB1928PLC093924), formerly known as 'Indian Investment Co. Ltd.', a public limited company, incorporated under the Indian Companies Act, 1913, and having its registered office at 21, Strand Road Kolkata – 700 001, West Bengal, within the aforesaid jurisdiction.

...TRANSFEROR COMPANY

And

N.B.I. INDUSTRIAL FINANCE COMPANY LIMITED (CIN: L65923WB1936PLC065596), a public limited company, formerly known as 'THE NEW BANK LIMITED', incorporated under the Indian Companies Act, 1913 and having its registered office at 21, Strand Road, Kolkata – 700 001, within the aforesaid jurisdiction.

...TRANSFeree COMPANY

And

In the matter of:

1. WESTERN INDIA COMMERCIAL COMPANY LIMITED
2. N.B.I. INDUSTRIAL FINANCE COMPANY LIMITED

...APPLICANTS

Date of pronouncing the order:18/06/2024

CORAM:

Smt. Bidisha Banerjee : Hon'ble Member (Judicial)
Shri D. Arvind : Hon'ble Member (Technical)

Advocates appearing for the Applicants

Rusha, Mitra, Adv] For the Applicants
S.Makkar, Adv

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This is an application filed under Section 230 to 232 of the Companies Act, 2013 (“Act”), read with the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 (“CAA Rules”), in connection with a proposed Scheme of Amalgamation of Western India Commercial Company Limited, the Applicant No. 1 (the “Transferor Company”) with N.B.I. Industrial Finance Company Limited, the Applicant No. 2 (the “Transferee Company”) and their respective shareholders and creditors (hereinafter referred to as ”Scheme”). It is submitted on behalf of the Applicants that the proposed Scheme, a copy of which has been annexed to the company application

and marked as Annexure – “G” (at pages 287 to 315), would *inter alia* have the following benefits for both the Applicants, their shareholders, creditors, employees and all other concerned as follows:

- a. The proposed Scheme would entail that the equity shares of the Applicant No. 2/Transferee Company, which are listed on the National Stock Exchange of India Limited (“NSE”) would be issued to shareholders of the Transferor Company. Therefore, the proposed Scheme would result in providing better liquidity to the shareholders of Transferor Company while not being prejudicial to the interest of Applicant No. 2/Transferee Company and its shareholders, creditors, employees or any stakeholders.
 - b. There would be potential for further expansion of the businesses due to consolidation of capital base and increased borrowing strengths of the combined entity.
 - c. The proposed Scheme would result in significant reduction in multiplicity of legal and regulatory compliances which at present is required to be made separately by the Applicants.
2. The Learned Advocates appearing for the Applicants further submits as follows:-
- i. The Board of Directors of the Applicants have duly approved the Scheme in their respective board meetings held on 21st September 2022, which resolutions are annexed to the company application as Annexure “H” Colly (at pages 316 to 321).
 - ii. The share exchange ratio of the Applicants has been fixed on a fair and reasonable basis and on the basis of the valuation report dated

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21st September 2022 prepared by RBSA Valuation Advisors LLP, copy of which has also been annexed to the company application as Annexure “I” (at pages 322 to 333).

- iii. The Applicant No. 1/Transferor Company is listed with the Calcutta Stock Exchange (“CSE”) and has filed the Scheme with both NSE and CSE. The Applicant No. 1 has complied with the observation letter received from NSE and CSE dated 26th May, 2023 and 31st May, 2023 annexed at Annexure – “J” (at pages 334 to 338) prior to filing of the form and the Scheme before this Tribunal.
- iv. The Applicant No. 2/Transferee Company is listed with the NSE and has therefore filed the proposed Scheme in accordance with Regulation 37 of the LODR Regulations. The Applicant No. 2/Transferee Company has complied with the observation letter of the NSE dated 26th May, 2023 which is annexed as Annexure – “K” (at pages 339 to 341) prior to filing of the form and Scheme before this Tribunal.
- v. The Applicants being NBFCs are registered with the Reserve Bank of India (RBI). The Applicants have filed an application dated 17th July, 2023 with the RBI seeking prior written approval of the RBI pursuant to Chapter IX- Acquisition / Transfer of Control of Applicable NBFCs of RBI Master Direction - Non-Banking Financial Company - Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 (“Master Direction”) with reference number DNBR.PD.007/03.10.119/2016-17. As on the date of filing the company application with this Tribunal, the approval of the RBI was pending, the application to the RBI is annexed to the company application as Annexure – “L” (at 342 to 343). However, since filing of the company application, the ‘No-

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objection letter' of RBI dated 18 January, 2024 has been received by the Applicants, a copy whereof have been filed by the Applicants by way of supplementary affidavit dated 24 April, 2024 and marked as Annexure 'SA-1' (at page 7).

- vi. The Applicant No. 1/Transferor Company has produced a certificate by an independent auditor certifying the list of equity shareholders which is annexed as Annexure – “M” (at pages 344 to 346). The Applicant No. 2/Transferee Company has also produced a certificate by an independent auditor certifying the list of equity shareholders which is annexed as Annexure – “N” (at pages 347 to 349).

- vii. The Applicant No. 1/Transferor Company does not have any secured creditors. The Applicant No. 1/Transferor Company has four unsecured creditors. A copy of the certificate of independent auditor has been annexed to the company application as Annexure – “O” (at pages 350 to 353). The Applicant No. 1/Transferor Company has produced affidavits from each of its unsecured creditors consenting to the proposed Scheme and such consent affidavits have been annexed to the company application as Annexure – “P” (at pages 354 to 369).

- viii. Further, the Applicant No. 2/Transferee Company also does not have any secured creditors and has five unsecured creditors. A copy of the certificate of independent auditor has been annexed to the company application as Annexure – “Q” (at pages 370 to 373). The Applicant No. 2/Transferee Company has also produced affidavits from each of its unsecured creditors consenting to the proposed Scheme and such consent affidavits have been annexed to the company application as Annexure – “R” (at pages 374 to 393-A).

- ix. Further, in terms of directions passed by this Tribunal on 10 April 2024 in the company application, the Applicants have filed the certificate of the Statutory Auditors dated 20 September 2022 on accounting treatment in the Scheme being in accordance with and in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013. Copy of such certificate of the Statutory Auditor is annexed to the supplementary affidavit dated 24 April 2024 and marked as Annexure 'SA-3' (at pages 12 to 14).
3. In view of the aforesaid, the Applicants have sought leave of this Tribunal to convene a meeting of the equity shareholders of the Applicant No. 1/Transferor Company and the Applicant No. 2/Transferee Company. In the company application, the Applicants have accordingly prayed as follows:
- “a) *An Order be passed directing for convening a meeting, including provision for e-voting facility, of the equity shareholders of the Transferor Company to be held at 21, Strand Road, Kolkata – 700001, Top floor Hall or at such other place as this Hon’ble Tribunal may deem fit and proper for the purpose of considering, and if thought fit, approving with or without modification(s), the Scheme of the Applicants, and Mr. Subhas Jajoo or Mr. J. P. Mundra, or any other person be appointed as Chairperson to preside over the said meeting and Mr. Rohit Kumarr Mundhra, or any other person be appointed as the scrutinizer of the said meeting;*
- b) *An Order be passed directing for convening a meeting, including provision for e-voting facility, of the equity shareholders of the Transferee Company to be held at 21, Strand Road, Kolkata – 700001, Top floor Hall or at such other place as this Hon’ble Tribunal*

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may deem fit and proper for the purpose of considering, and if thought fit, approving with or without modification(s), the Scheme of the Applicants, and Mr. Ashok Bhandari or Mr. B. L. Gaggar or any other person be appointed as Chairperson to preside over the said meeting and Mr. Rohit Kumarr Mundhra, or any other person be appointed as the scrutinizer of the said meeting;

- c) An Order be passed dispensing with the meeting of the unsecured creditors of Transferor Company as 100% of the unsecured creditors in value of the Transferor Company have given their written consent by way of affidavit for dispensation of such meeting;*
- d) An Order be passed dispensing with the meeting of the unsecured creditors of Transferee Company as 100% of the unsecured creditors in value of the Transferee Company have given their written consent by way of affidavit for dispensation of such meeting;*
- e) An order be passed dispensing meeting of the secured creditors of the Transferor Company as the Transferor Company does not have any secured creditors;*
- f) An order be passed dispensing meeting of the secured creditors of the Transferee Company as the Transferee Company does not have any secured creditors;*
- g) An order be passed directing the Transferee Company to issue newspaper advertisement(s) for convening meeting of the aforesaid equity shareholders;*

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- h) *Alternatively, directions may be given as to the method of convening, holding and conducting the meetings and as to the notices to be issued for the same;*
- i) *It is prayed that this Hon'ble Tribunal may be pleased to direct notices to be issued to the statutory authorities as per the provisions of Section 230 (5) of the 2013 Act and Rule 8 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016;*
- j) *Such further or other order or orders be made or other directions be given affording necessary relief to the Applicants as in the premises this Hon'ble Tribunal may deem fit and proper."*
4. The Applicants have submitted that the assets of the Applicants are sufficient to meet all the liabilities and the Scheme will not adversely affect the rights of any of the creditors of the Applicants in any manner whatsoever. On the contrary, the Scheme will inure to their benefit and is in their interest.
5. We have perused the documents annexed to the company application and the supplementary affidavit and have heard the submissions made on behalf of the Applicants. We, accordingly pass the following Orders:
- a) That the Applicant No. 1/Transferor Company and Applicant No. 2/Transferee Company have Nil secured creditors and therefore, the requirement of convening and holding meetings of the secured creditors of the Applicant No. 1/Transferor Company and Applicant No. 2/Transferee Company do not arise;
- b) That meetings of the respective unsecured creditors of Applicant No. 1/Transferor Company and Applicant No. 2/Transferee Company are

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dispensed with in view of all such creditors having already considered and given their written consent to the Scheme in the form of affidavits;

- c) That a meeting of the equity shareholders of the Applicant No. 1/Transferor Company be convened at the registered office of the Applicant No. 1/Transferor Company at 21, Strand Road, Kolkata – 700001, Top floor Hall on Friday, the 9th day of August, 2024 at 11:00 A.M. for the purpose of considering, and if thought fit, approving with or without modification(s), the proposed Scheme of the Applicants;
- d) That a meeting of the equity shareholders of the Applicant No. 2/Transferee Company be convened at the registered office of the Applicant No. 2/Transferee Company at 21, Strand Road, Kolkata – 700001, Top floor Hall on Friday, the 9th day of August, 2024 at 12 Noon for the purpose of considering, and if thought fit, approving with or without modification(s), the proposed Scheme of the Applicants;
- e) In the event any of the meetings of the Applicants spill over and is concluded after the time fixed for commencement of the succeeding meetings of the Applicants, such succeeding meeting shall be held immediately after such conclusion of the prior meeting;
- f) In addition to the above, the respective equity shareholders of the Applicants shall also have the facility and option of voting on the resolution for approval of the Scheme by casting their votes through ballot paper at the venue of the meeting or by remote electronic voting (“remote e-voting”) during the remote e-voting period commencing on 25th July, 2024 at 9:00 AM (IST) and ending on 8th August, 2024 at 5:00 PM (IST). Such facility for remote e-voting by the respective equity shareholders of the Applicants shall be disabled at 5:00 P.M., IST, on 8th August, 2024.

- g) The respective equity shareholders of the Applicants may opt to exercise their votes only in one mode, i.e., by (a) remote e-voting or (b) through ballot paper at the venue of the meeting. In case, the equity shareholders cast their votes by remote e-voting, they will not be entitled to vote again through ballot paper facility provided by the respective Applicants at the venue of the meeting. If they do so, the votes so cast by them at the meeting shall be treated as invalid. However, it is clarified that, the equity shareholders opting to cast their votes through remote e-voting shall nevertheless be entitled to attend the meeting in accordance with the Act and participate in the discussions in the meeting but not to vote again through ballot paper at the meeting.
- h) The Applicants 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 remote e-voting.
- i) That at least 30 (thirty) days before the date of the said meeting(s) a joint advertisement be published by the Applicants, conveying the date of the meeting(s) and stating that the copies of the Scheme and statement containing necessary details as required to be furnished pursuant to Section 230 of the Act, 2013, read with Rule 6 of CAA Rules, and a prescribed form of proxy can be obtained free of charge from 21, Strand Road, Kolkata 700 001, be inserted once each in the “**Arthik Lipi**” Bengali newspaper and in the “**Business Standard**” English newspaper, both circulated in West Bengal as per requirements of Section 230 of the Act, in Form No. CAA 2 of the CAA Rules.

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- j) That in addition, at least one month before the meeting(s) to be held as aforesaid, the respective notices convening the said meetings together with a copy of the said Scheme, a copy of the statement required to be sent under the provisions of the Act read with CAA Rules disclosing necessary details including conveying the place and time as aforesaid and the prescribed form of proxy and Attendance Slip shall be sent to the respective equity shareholders of the Applicant Companies whose names are appearing in the respective Register of Members of the Applicant Companies as on 14th June, 2024, by registered post or speed post or air mail or courier or email or hand delivery or through personal messenger at their respective or last known addresses. The said notice along with accompanying documents shall also be posted on the respective website of the Applicants Companies.
- k) That notice as per requirements of sub section (5) of Section 230 of the Companies Act, 2013, alongwith all documents including copy of Scheme and the statements disclosing necessary details shall be served on the concerned statutory authorities having jurisdiction over Applicants and such other relevant sectoral regulators/ authorities, if applicable, which are likely to be affected by the proposed Scheme by sending the same by email or hand delivery through personal messenger or by registered post or speed post or courier for filing their representation, if any, within 30 days from the date of receipt of notice. 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 of such representation being sent simultaneously to the Applicants and/or their Advocates. If no such representation is received by the Tribunal with the said period, it shall be presumed that such authorities have no representation to make on the said Scheme. Such notice shall be sent pursuant to Section 230(5) of the Act and Rule 8 of

CAA Rules with necessary variation incorporating the directions therein.

- l) **S.M Gupta, PCS** [Mobile: **9830057568** and email id: **smguptaandco@gmail.com**, is appointed as the Chairperson of the separate meetings of the equity shareholders of the Applicants to be held as aforesaid in terms of this order. The Chairperson shall be paid a consolidated sum of Rs. **80,000/-** for conducting the aforesaid meetings of the respective equity shareholders of the Applicants as Chairperson.

- m) **Adv Anushka Dhar, Mobile: 9874920029** and email id: **anushkadhar.2020@gmail.com** , is appointed as the Scrutinizer of the separate meetings of the equity shareholders of the Applicants to be held as aforementioned in terms of this order. The Scrutinizer shall be paid a consolidated sum of **Rs.60,000/-** for conducting the aforesaid meetings of the respective equity shareholders as Scrutinizer.

- n) The quorum should be fixed in accordance with Section 103 of the Act, present either in person or by proxy.

- o) That the Chairperson appointed for the said meeting(s) or any person authorised by him to issue and send out the notice of the said meeting(s) referred above. The Chairperson shall have all powers under the CAA Rules, as may be applicable in relation to the conduct of the meeting including for deciding procedural questions that may arise at the meeting or at any adjournment thereof or any other matter including, an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

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- p) A person, including a body corporate, entitled to attend and vote at the venue of a meeting, as aforesaid, may do so personally or by proxy or by authorized person (in case of body corporates), provided the proxies in the prescribed form duly signed by such person and/or the certified copy of resolution of the Board of Directors or other governing body of such person, where it is a body corporate, authorizing its representative to attend and vote at such meeting on its behalf, as the case may be, is deposited at the respective registered office of the concerned Applicant not later than 48 (forty eight) hours before the time for holding such meeting. If a body corporate chooses to vote by remote e-voting, a copy of such board resolution shall be either deposited physically at the respective registered offices of the Applicants or sent by email to the Scrutinizer. It is clarified that proxies can only attend at the venue of the meeting and vote thereat by ballot paper and are not entitled otherwise to attend or to vote by remote e-voting.
- q) The Chairperson(s) shall have the power to adjourn the meeting(s), if necessary, and to conduct the procedure for the adjourned meeting(s) as deemed necessary under the Act. In case the required quorum as noted above for the meetings is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present and voting shall be deemed to constitute the quorum. For the purposes of completing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the meeting, is filed with the respective registered offices of the Applicant at least 48 hours before the meeting. The Chairperson appointed herein shall ensure that the proxy register is properly maintained.
- r) The value and number of the equity shares of each member shall be in accordance with the respective books/register of the Applicants or

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depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the meeting(s) shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

- s) The cut-off date for determining the eligibility of equity shareholders who will be entitled to vote and value of their votes shall be 19th July, 2024 and the value of the votes cast shall be reckoned and scrutinized with reference to the said date.
- t) Subject to the directions and matters dealt with herein, the procedure for remote e-voting and conduct of voting at the venue of the meeting through ballot papers in so far as the same is prescribed by the Companies (Management & Administration) Rules, 2014 and the forms thereunder shall be followed with such variations as required in the circumstances and in relation to the resolution for approval of the Scheme.
- u) The Applicants to file an affidavit proving service of notice of meeting(s) and publication of advertisement and compliance of all directions contained therein at least 7 (seven) days before the meeting(s) to be held.
- v) The votes cast shall be scrutinized by the Scrutinizer pursuant to Rule 21 of the Companies (Management & Administration) Rules, 2014. The votes cast through (i) remote e-voting; and (ii) ballot paper 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 respective reports on the separate meetings of the equity shareholders of the Applicants along

with all papers relating to the voting to the Chairperson of the said meetings of the equity shareholders of the Applicants within two working days from the conclusion of the said meetings. The Chairperson shall declare the respective results of the meetings of the equity shareholders of the Applicants after submission of the reports of the Scrutinizer. The declared results shall be displayed on the respective notice board of the Applicants at their respective registered offices and shall also be posted on their respective website. Such results shall also be forwarded to the stock exchanges where the shares of the Applicants are listed. Further, such declaration of results shall also be posted on the website of the agency providing the facility for e-voting. In addition to the aforesaid, all other requirements with regard to publication and communication of Scrutinizer's report and Chairperson's declaration of results, as prescribed under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 should also be complied with by the Applicants.

- w) The respective resolution for approval of the proposed Scheme put to a meeting shall, if passed by a majority in number representing three-fourths in value of the respective shareholders casting their votes, as aforesaid, 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.

- x) That the Chairperson(s) do report to this Tribunal the result of the said meeting(s) within 4 weeks from the date of conclusion of the meeting(s) and his/her report shall be in Form No. CAA 4 of the CAA Rules. Confirmation petition to be filed within 7 (seven) days thereafter.

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6. The application being Company Application (CAA) No. 184/KB/2023 is disposed of accordingly.
7. The Registry is directed to send e-mail copies of the order forthwith to all the parties.
8. Urgent certified copy of this Order, if applied for be issued upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 18th day of June, 2024

NKS(LRA)