

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**

**CP (CAA) No.23/BB/2021**  
**(Second Motion)**

**U/s. 230-232 and other applicable**  
**Provisions of the Companies Act, 2013**

**IN THE MATTER OF:**

**IUNITE TECHNOLOGIES PRIVATE LIMITED**

20, 1st Cross, Annapoorneshwari Temple,  
 New Bank Colony, Konanakunte,  
 Doddakallasandra,  
 Bengaluru-560 062.

... Petitioner No. 1/  
 Transferor Company

**IVALUE INFOSOLUTIONS PRIVATE LIMITED**

No.1140, VGR ESSOR, 3rd Floor,  
 6th Main, 17th Cross, Sector-7,  
 HSR Layout,  
 Bengaluru - 560 102.

... Petitioner No. 2/  
 Transferee Company

**Order delivered on: 08<sup>th</sup> June, 2022**

- CORAM:**
1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)
  2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioners	:	Shri. Uday Shankar R.M., Adv. With Ms. Princi Jaiswal, Adv.
For the ROC, RD	:	Shri. Hemanth Rao, Adv.
The Dy. OL	:	Shri. Varun B.S.
For the IT Dept.	:	Shri Ganesh R. Ghale

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

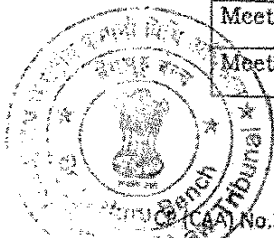
1. This is a joint second motion Petition filed by iUnite Technologies Private Limited (for brevity, the "Petitioner Company No.1" / "Transferor Company") and iValue Infosolutions Private Limited (for brevity, the "Petitioner Company No.2" / "Transferee Company") under Sections 230



and 232 of the Companies Act, 2013 (for short to be referred hereinafter as the 'Act') and other applicable provisions of the Companies Act, 2013 by *inter alia* seeking that for the sanction of Scheme of Amalgamation (for brevity 'Scheme') between the Transferor Company and the Transferee Company. The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The Petitioner Companies filed First Motion Application bearing CA (CAA) No.10/BB/2021 ("**First Motion Application**") before this Tribunal seeking to dispense with the meeting of the Equity Shareholders and unsecured Creditors of Applicant Company No:1 and Equity Shareholders, Preference shareholders and secured Creditors of Applicant Company No:2. Since there is no secured creditors in the Applicant Company No:1 there was nothing to convene the meeting; and it was brought to convene the meeting of unsecured creditors of Applicant Company No.2. Based on such application moved under section 230-232 of the Companies Act, 2013 necessary directions were issued vide order dated 10.02.2021 wherein the meetings of Equity Shareholders and unsecured creditors of the Applicant Company No:1 and Equity Shareholders, Preference shareholders and secured Creditors of Applicant Company No:2 were dispensed and direction were issued to convene the meeting of Unsecured Creditors of Applicant Company No:2. Further, it was directed to issue paper notification in English "*The Hindu*" and in Kannada "*Sanjayavani*" about the Convening of meetings by this Tribunal. Details of the first motion order dated 10.02.2021 are as under:

CA (CAA) No.10/BB/2021 – Date of Order 10.02.2021		
List	Transferor Company	Transferee Company
Meeting of Equity Shareholders	Dispensed	Dispensed
Meeting of Preference Shareholders	NA	Dispensed
Meeting of Secured Creditors	Nil	Dispensed
Meetings of Unsecured Creditors	Dispensed	Convene the meeting



CA (CAA) No.23/BB/2021

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3. Pursuant to the First Motion Application, the Tribunal directed to convene the meetings of unsecured creditors of the Applicant company No.2 on 07.04.2021 and the report of the Chairman dated 16.04.2021 is attached along with the petition wherein it is stated that 7 Unsecured Creditors of the Transferee company were present representing 100% of the total unsecured debt, who were are of the opinion that the Scheme of Amalgamation of Transferor Company with Transferee Company be approved and agreed to. The Report of the Scrutinizer dated 10.04.2021 of the aforesaid meetings is attached along with the Petition.
4. When the petition was listed on 14.07.2021, through video conferencing, the following directions were issued:  
  
*"Admit and Issue Notice. The Registry is directed to issue notice on all the statutory authorities viz., Regional Director, Hyderabad, Registrar of Companies, The Official Liquidator, Karnataka, the Principal Commissioner of Income Tax, Karnataka & Goa Region, Bengaluru and to the Secretary, Competition Commission of India, New Delhi and the learned counsel for the petitioner is permitted to collect the notice and serve it on the said Statutory Authorities along with company petition and material papers by Speed post as well as by authorised email. The petitioner is also permitted to cause paper publication in 'The Hindu', English Daily and 'Udayavani', Kannada Daily, and to file proof of service of notice in the Registry well before the next date of hearing. The petitioner is also directed to file reply affidavit to the observations of the aforesaid statutory authorities, if any, well before the next date of hearing with a copy served on the respective authority. Post the case on 01.09.2021."*
5. In pursuant to the aforesaid notice, the authorized signatory of the petitioner companies has caused paper publications dated 06.08.2021 and same has been filed vide Diary No.2155 dated 18.08.2021. Further, copies of proof of service of notice to the aforesaid statutory authorities i.e., the Registrar of Companies, Karnataka, The Regional Director (SER), Hyderabad, The Official Liquidator, Karnataka, the Principal Commissioner of Income Tax, Karnataka & Goa Region and to the Secretary, Competition Commission of India, New Delhi. It is deposed that no objection has been received by the Petitioner Company from any person or authority/ department to the Scheme.



6. The main objects, date of incorporation, authorized, issued and paid-up share capital, rationale of the scheme and interest of employees have been discussed in detail in first motion order passed on 10.02.2021.
7. The Board Resolution approving the Scheme by the Transferor and Transferee Company is annexed at Annexure E & I of the Petition.
8. It is further submitted that the Certificate of Statutory Auditors of the Transferee Company *inter alia* stating that the proposed accounting treatment in the books of the Transferee Company as contained in Clause 17 of the "Scheme" is in compliance with the applicable Accounting Standards notified u/s 133 of the Companies Act, 2013 and other Generally Accepted Accounting Principles in India, as applicable. Further, the Certificate of Statutory Auditors of Transferor Company has *inter alia* opined that the Scheme is in compliance with the standards notified u/s 133 of the Companies Act, 2013. The said Certificates are annexed as Annexure-M to the Petition.
9. The audited financial statements of the petitioner companies as on 31.03.2020 are attached as Annexures C & G respectively of the petition. Further, Unaudited Financial Statement as on 31.03.2021 of the Petitioner Companies are attached as Annexures D & H respectively.
10. As per the Scheme, the "Appointed Date" means the commencement of business on 01<sup>st</sup> April, 2020 or such other date as maybe approved by the NCLT (defined hereafter).
11. In pursuant to the notice, the Regional Director (RD) has filed its report along with the ROC vide Diary No.2915 dated 02.11.2021, by *inter alia* observing as under, *vide para 2*:

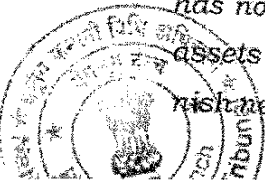
a) "The Transferor company is holding 24,75,352 equity shares of Rs.10/- each with a total value of Rs. 30 Crores in the transferee company. As per Clause 15.1, upon the scheme becoming effective, 24,75,352 equity shares of the Transferee company held by the Transferor company shall be cancelled without any further act or deed



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and shall amount to reduction of share capital u/s 66 of the companies act, 2013.

- b) The Transferee Company is a subsidiary company of Transferor Company with 58.8% shares
- c) It is mentioned in clause 16 part III of scheme that the authorized capital of the transferee company shall automatically stand increased without any further act or deed or without payment of filing fee and stamp duty. In this regard, the transferee company shall comply with provisions of section 232(3)(i) of the companies act, 2013 and pay the difference fee, after setting off the fee already paid by the Transferor Company.
- d) The Transferee Company is having certain undisputed amounts payable in respect of professional tax and disputed customs duty. The Transferee Company shall furnish an undertaking to the Hon'ble NCLT stating that the dues shall be paid, as and when demanded by the said authorities.
- e) It is seen from the NCLT's order dated 10/2/21 that all secured creditors have not given consent for approval of scheme. Hence consent may be obtained from HDFC Bank Ltd, IDFC First Bank Ltd and IDBI Bank Ltd, by the transferee company and the same is to be furnished to the NCLT.
- f) As per the Balance Sheet as at 31/3/2020, the transferee company has subscribed huge CCDs of transferor company to the tune of Rs.29.50crores. If the scheme is allowed, the transferee company has to nullify the amount and should not be allowed to pay or settle it whatsoever.
- g) The Petitioners did not submit valuation report for issuing new shares at Rs.4,950/- per share to the shareholders of the transferor company against the face value of Rs.10/-. The valuation seems highly inflated. The EPS as at 31/3/2021 is just 10.14 and the Transferor Company has not done any noticeable business operations and absolutely no assets at all. Hence, the Petitioner Companies may be directed to furnish necessary justification in this regard to the Hon'ble NCLT.



- h) In the year 2020-2021, the Transferor Company has all of a sudden shown Rs.5.30crores "Inventory". For the past few years, no inventory has been shown in the books of accounts. This extraordinary amount needs to be explained by the petitioner by submitting Auditors Certificate and clarification to the Hon'ble NCLT.
- i) As per the Balance Sheet as at 31/3/2020 and 31/3/2021 of Transferee Company, an amount of Rs.206crores and Rs.237crores is payable to the unsecured creditors. Since the amount is substantial the company has convened meeting of the unsecured creditors 7/4/2021. As fixed by the Hon'ble Tribunal, approval of Rs.71.1crores value of creditors should have approved the scheme being 30% of total value of creditors fixed by the Tribunal. However, the company has got approval only from 34.49 crores of value of creditors. Hence, the approval of the remaining creditors needs to be furnished before the Hon'ble NCLT before the approval of the scheme.
- j) iValue Infosolutions Private Limited has become subsidiary of M/s iUnite Technologies Private Limited holding 60% share capital w.e.f. 17-4-2018. However, on 10-04-2018, iValue Info solutions Private Limited has invested a sum of Rs.295,000,000/-, which is borrowed from banks into the CCDs of its holding company iUnite Technologies Private Limited which is contrary to the provisions of section 19 of the companies act, 2013. Hence, the Petitioner Companies need to furnish detailed explanation in this regard.
- k) During the year 2018-19, the company has written off Rs.15,532,890 as bad debts and also provided a sum of Rs.57,00,027/- towards doubtful debts which is incurring huge loses on this account, which the petitioner company needs to explain before the Hon'ble NCLT".

12. Subsequently, reply affidavit to the RD & ROC reports have been filed by petitioner companies vide Diary No.3460 dated 08.12.2021, *inter alia* stating as under:

"4. **Reply to point 2(a) of RD & RoC Common report:** It is submitted that that as per clause 15.1, upon the Scheme becoming effective



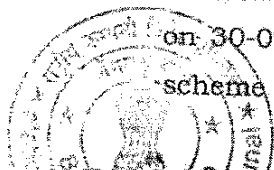
24,75,352 (Twenty Four Lakhs Seventy Five Thousand Three Hundred Fifty Two Only) equity shares of Transferee Company/Petitioner No. 2 held by Transferor Company/Petitioner No.1 on the Effective Date shall be cancelled without any further act or deed by operation of law and shall amount to reduction of share capital. And as stated in the clause 15.2, there will not be any net reduction in the share capital of the Transferee Company.

**5. Reply to point 2(b) of RD & RoC Common report:** It is submitted that, these are the facts on record and hence require no further comment.

**6. Reply to point 2(c) of RD & RoC Common report:** It is submitted that the Transferee Company / Petitioner No. 2 undertakes to comply with provisions of Section 232(3)(i) of the Companies Act, 2013 and file necessary forms with the Registrar of Companies and pay the difference fee, if any, on the increase of the authorized capital after setting off the fee already paid by the Transferor Company/ Petitioner No. 1.

**7. Reply to point 2(d) of RD & RoC Common report:** It is submitted that the Transferee Company/Petitioner No. 2 does not have undisputed amounts payable in respect of professional tax and disputed customs duty. However, the Petitioner No. 2 undertakes to pay to discharge the dues Income Tax and Custom Duty after the adjudication of the same before the appropriate Tribunals/ Courts.

**8. Reply to point 2(e) of RD & RoC Common report:** It is submitted that 95.52% of the Secured Creditors have given their consent for approval of scheme and their respective consent letter has been filed before the Hon'ble National Company Law Tribunal, Bengaluru Bench in CA(CAA) No.10/BB/2021. That the Hon'ble National Company Law Tribunal vide Order dated 10-02-2021 in CA(CAA) No.10/BB/2021 has dispensed with the holding and convening of the meeting of the Secured Creditors of the Petitioner No.2. As IDBI Bank was a secured creditor on 30-09-2020, IDBI Bank Ltd has given its consent for approval of scheme which had been placed as Annexure R of the Company



Application (First Motion) filed before the Hon'ble National Company Law Tribunal, Bengaluru Bench in CA (CAA) No. 10/BB/2021 depicts the same. The Order dated 10-2-2021 of Hon'ble National Company Law Tribunal, Bengaluru Bench at para 2 (8) states that the CA certificate dated 3-12-2020 certifies that the Petitioner No. 2 have 5 Secured Creditors as on 30-9-2020 in which HDFC and IDFC Bank have not been mentioned as HDFC Bank Ltd and IDFC First Bank Ltd were not secured creditors as on 30-09-2020. The Chartered Accountant's Certificate dated 3-12-2020 had been placed as Annexure Q of the Company Application (First Motion) filed before the Hon'ble National Company Law Tribunal, Bengaluru Bench in CP (CAA) No. 10/BB/2021 depicts the same. The CA certificate submitted in the Company Application in CA(CAA) No.10/BB/2021at Annexure Q is now placed as Annexure 1 to this affidavit.

**9. Reply to point 2(f) of RD & RoC Common report:** It is submitted that as per clause 17.5 of Scheme, the CCDs being held by Transferor Company/Petitioner No.1 will be cancelled in both the companies as a contra entry.

**10. Reply to point 2(g) of RD & RoC Common report:** It is submitted that the Valuation Report has been given and is place as Annexure 'O' of the top noted petition at Page 231 to 236. The Valuation Report has been given by a Registered Valuer recognized by IBBI and the Regional Director cannot state that it is inflated unless they are able to demonstrate that there is another mode of valuation.

The shareholders of the Transferee Company are a mirror image of the Transferor entity and there is no change or loss in the economic interest as shareholders are the same in both companies.

The commercial wisdom of the board and shareholders cannot be challenged as they have submitted to the process under the Companies Act 2013, and who have duly approved the scheme along with secured and unsecured creditors.





**11. Reply to point 2(h) of RD & RoC Common report:** It is submitted that the Transferor Company have received an order from one of its end customers for supply of software products and services during the month of March 2021. Due to on account of Covid-19 pandemic the same was delivered in the month of April 2021, therefore the Transferor Company have stock of Rs. 5.30 crores as of 31<sup>st</sup> March 2021. The payment for the products was received from the end customer in July 2021 and August 2021. We enclosed the auditor certificate as **Annexure 2**.

**12. Reply to point 2(i) of RD & RoC Common report:** It is submitted that the Hon'ble National Company Law Tribunal, Bengaluru Bench vide Order dated 10-2-2021 directed to convene the meeting of the Unsecured Creditor of the Transferee Company/ Petitioner No. 2 on 7-4-2021. The quorum of the said meeting was fixed at 30% of total value of unsecured creditors, either in person or through representative in the view of Act prescribed three-fourth of the unsecured creditors required as per the Order dated 10-2-2021. The total value of the Unsecured Debt of the Petitioner No. 2 is Rs.57,62,46,274/- (Rupees Fifty Seven Crore Sixty Two Lakh Forty Six Thousand Two Hundred and Seventy Four Only). Therefore, the value amounting to Rs.17,28,73,882/- (Rupees Seventeen Crore Twenty Eight Lakh Seventy Three Thousand Eight Hundred and Eighty Two Only) i.e., 30% of the total value Unsecured Debt was the required quorum of the meeting. On the meeting day the requisite quorum of as specified in the Para No. 6(iv) of the Order dated 10-2-2021 was present at the meeting i.e.07 Unsecured Creditors representing Rs.34,48,86,759/-(Rupees Thirty Four Crore Forty Eight Lakh Eighty Six Thousand Seven Hundred and Fifty Nine Only) of the total value of the Unsecured Debt were present and thereby satisfied the meeting quorum. Below are the details of the Unsecured Creditors' amount and quorum of the meeting:



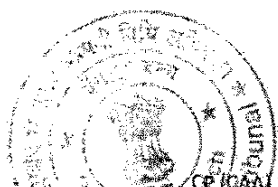
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Particulars	Amount (In Rs.)
Unsecured Creditors balance as on 30-Sept-2020	1,69,91,19,823
Paid to Unsecured Creditors during the period i.e., 01-Oct-2021 to 03-Apr-2021	1,12,28,73,549
Unsecured Creditors balance as on 3-Apr-2021	57,62,46,274
Quorum required as per NCLT Order (i.e., 30% of total value of unsecured creditors)	17,28,73,882
Quorum at the Meeting (i.e., 59.85% of total value of unsecured creditors)	34,48,86,759

The 07 Unsecured Creditors holding Rs.34,48,86,759/- (Rupees Thirty Four Crore Forty Eight Lakh Eighty Six Thousand Seven Hundred and Fifty Nine Only) of value of Unsecured Debt attended the meeting being 100% present and voting. All the 07 Unsecured Creditors constituting 100% voted in favour of the Scheme of Amalgamation. The section 230(6) of the Companies Act, 2013 states as follows:

*"6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator [appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,] and the contributories of the company"*

The majority of the person present at the meeting i.e. 100% voted in favour of the composite Scheme of Amalgamation as required under the Companies Act and as per Section 230(6) of the Companies Act, 2013 which is more than three-fourth value of



the creditors at the meeting after complying with the quorum requirement. The Chairman of the meeting i.e. Mr. K Dushyantha Kumar as appointed by the Hon'ble National Company Law Tribunal, Bengaluru Bench vide Order dated 10-2-2021 subsequently filed the Chairman Report's before the Hon'ble National Company Law Tribunal, Bengaluru Bench on 19-4-2021. Hence, section 230(6) of the Companies Act, 2013 has been duly complied.

**13. Reply to point 2(j) of RD & RoC Common report:** It is submitted that Transferor company/Petitioner No. 2 has allotted Compulsorily Convertible Debentures (CCDs) to Transferee Company on 17-4-2018. The CCDs are convertible into equity shares at the following date 13-4-2028. The CCDs until then remain as debentures with no voting rights and therefore provisions of Section 19 of the Companies Act, 2013 will not be applicable to this CCDs. As per clause 17.5 of Scheme, the CCDs being held by Transferor Company/Petitioner No.1 will be cancelled in both the companies as a contra entry. Under the above circumstances, there is no violation of Section 19 of the Companies Act, 2013.

**14. Reply to point 2(k) of RD & RoC Common report:** It is submitted that The Transferee Company/Petitioner No.2 is engaged in the distribution business of sourcing and delivering of Data, Network and Application Management Products. As a Distributor, the Transferee Company/Petitioner No.2 have to take credit exposure on behalf of vendors (original equipment manufacturers), hence exposure to bad debts will be higher. During the year 2018-19 the Transferee Company has written off Rs.1,55,32,890/- as bad debts its 0.22% against to revenue for the year 2018-19. The bad debts written off and provisions made for doubtful debts are as per accounting standards and which is certified by the Auditors of the Company.

**13. The Official Liquidator (OL) in its report vide Diary No.2943 dated 05.11.2021 has not made any adverse observations or raised any**



objections to the present Scheme of Amalgamation and reply affidavit also filed vide Diary No.3461 dated 08.12.2021.

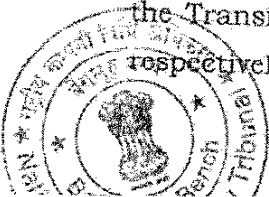
14. Learned Counsel for the Income Tax Department also submitted that their outstanding demand in case of M/s. iUnite Technologies Private Limited as per the Income Tax records is Nil. It is deposed that there is no objection received from the Income Tax Department for Transferor Company.
15. On 26.05.2022, we have heard the learned Counsel for the Petitioner Companies, Counsel for the Income Tax Department and Counsel for ROC, RD and OL.
16. The reports of the ROC, RD, OL & IT are taken on record. Similarly, reply filed by the Transferor and Transferee Companies to the Common RD & ROC report vide Diary No.3460 dated 08.12.2021 and reply affidavit to OL filed vide Diary No.3461 dated 08.12.2021 are taken on record. The IT report dated 15.02.2022 for Transferor Company, OL report dated 05.11.2021 has been filed and such documents are taken on record.
17. In view of the above discussion, we conclude that the objections / observations to the Scheme received from RD, ROC, OL & IT have been adequately replied by the Petitioner Companies and hence there is no impediment in approval of the Scheme.
18. The Scheme in question as annexed at Annexure-A is approved and we hereby declare that the same is to be binding on all the shareholders and creditors of the Transferor as well as Transferee Company. While approving the Scheme, it is clarified that this order should not be construed as an order in anyway granting exemption from payment of any stamp duty, taxes, or any other charges, if any, and payment in accordance with law or in respect of any permission/compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company, namely IUNITE Networks Private Limited shall stand dissolved without undergoing the process of winding up resulting in increase in the share capital of the Transferee Company, namely, iValue Infosolutions Private Limited.




**AND THIS TRIBUNAL DOES FURTHER ORDER:**

- (i) That the Petitioner Companies do, within 30 days after the date of receipt of this Order cause a certified copy of this Order to be delivered to the Registrar of Companies, Karnataka for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the said Transferee Company and the files relating to Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and
- (ii) That the Transferee Company shall deposit an amount of Rs.75,000/- with the Pay & Accounts Office, Chennai in respect of the Regional Director, South East Region, Ministry of Corporate Affairs, Hyderabad, and Rs.25,000/- in favour of The Prime Minister's National Relief Fund, within a period of four weeks from the date of receipt of certified copy of this Order; and
- (iii) That any person interested shall be at liberty to apply this Tribunal in the above matter for any directions that may be necessary.
- (iv) The approval / sanctioning of the Scheme shall not be construed as an exemption from any of the provisions under the Income Tax Act, 1961 or the Companies Act, 2013 and that the authorities under both the Acts, are at liberty to take appropriate action, in accordance with law, if so advised.

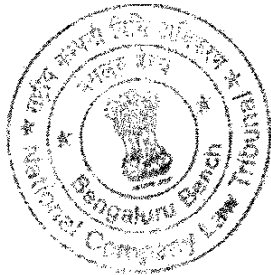
19. As per the directions, Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, formal orders be issued on the Petitioner Companies on filing of the Schedule Property i.e., (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company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




20. Accordingly, CP (CAA) No.23/BB/2021, is disposed of. Copy of this Order be communicated to the Counsel for the Petitioner Companies.

  
(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)

  
(AJAY KUMAR VATSAVAYI)  
MEMBER (JUDICIAL)



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for Registrar  
National Company Law Tribunal  
Bengaluru Bench