

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, (COURT NO.-II)**

KOLKATA

IA (I.B.C)/334(KB)2023

IVN.P(IBC)/14(KB)2023

IA (I.B.C)/497(KB)2023

IN

C.P. (IB)/1634(KB)2018

IN THE MATTER OF:

Alliance Broadband Services Private Limited, (CIN No.: U72900WB2003PTC095621), a company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 53A, Dr. Lala Mohan Bhattacharyya Road, 2nd Floor, Kolkata - 700014.

.....Financial Creditor

VERSUS

Manthan Broadband Services Private Limited, (CIN No.: U64203WB2002PTC094700), a company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having its registered office at 6, Ganesh Chandra Avenue, 3rd Floor, Kolkata – 700013.

.....Corporate Debtor

AND

IN THE MATTER OF:

Mr. Kuldeep Verma, Liquidator of Manthan Broadband Services Private Limited, having its office at 46, B.B. Ganguli Street, 5th Floor, Unit No.501, Kolkata – 700012 in the State of West Bengal

.....Respondent/Liquidator

Date of Pronouncement:12.01.2024

Coram:

Shri Bidisha Banerjee, Member (Judicial)

Shri D. Arvind, Member (Technical)

Appearance (via video conferencing/physically)

Mr. Ratnanko Banerji, Sr. Adv.] For Alliance Broadband Services Pvt. Ltd.

Ms. Swapna Choubey, Adv.]

Ms. Ashika Daga, Adv.]

Mr. Aayush Lakhota, Adv.]

Ms. Payal Kakra, Adv.] For the Operational Creditor

Mr. Pranav, Adv.]

Mr. Joy Saha, Sr. Adv.] For the Petitioner in

Mr. Yashvardhan Deora, Adv.] IVN.P (IBC)/14(KB)2023

Ms. Manju Bhuteria, Adv.] For the Liquidator

Mr. Rahul Auddy, Adv.]

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Mr. Aditya Gooptu, Adv.]
Mr. Rishav Banerjee, Adv.] For the Applicant in
Mr. S. Singhania, Adv.] IA(I.B.C)/334(KB)2023
Ms. Perna Shaha, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard Ld. Senior Counsels/ Counsels for the Parties.
2. **IA (I.B.C)/334(KB)2023** has been preferred by Member of Suspended Board of Manthan (CO) in liquidation.
3. The Applicants would submit as follows:
 - 3.1 The e-auction notice (Page 151) of 77,500 shares of the Corporate Debtor in Alliance is being sought to be sold in Liquidation, apart from an immovable property at Tajpur, West Bengal.
 - 3.2 That the Corporate Debtor held 48.14% shares in Alliance. That the majority Shareholders of Alliance have devised a strategy to obtain the shareholding of Alliance held by Corporate Debtor and intending to push Manthan into Insolvency have filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016. They have destroyed chances of any Resolution by their incorrect acts and after commencement of CIRP, by two rights issues dated 30th September 2019 and 7th September 2021, issued 39,000 and 1,00,000 shares respectively in Alliance, thereby, reducing the shareholding of corporate debtor in Alliance from 48.14% to 25.83%. Further that through their associates an attempt is being made to acquire the said shares at an undervalue in liquidation sale.
 - 3.3 It is submitted that such an attempt for auction sale is in Violation of Proviso to regulation 32 of the Liquidation Process Regulations, 2016 which provides that any asset of the Corporate Debtor which is subject to the security interest, shall not be sold, unless such security interest has been relinquished to the liquidation estate. Alliance having not yet relinquished its security interest in favour of the liquidation estate the shares could not have been put up for auction. That Alliance has filed a suit being C.S. No. 54 of 2019 in the Hon'ble High Court at Calcutta against the

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Corporate Debtor/Liquidator to prevent Corporate Debtor or Liquidator from enforcing any right in respect of these shares.. This contested issue between Alliance and Liquidator is also the subject matter of Application being I. A. No. 380 of 2021 and I. A. No. 386 of 2021, whereby, the Resolution Professional/Liquidator has sought for recovery of Title Deeds and Share Certificates from Alliance in respect of the concerned shares/land, put up for sale. It is yet to be decided by this Tribunal as to whether there is any security interest in respect of these assets. Thus, in accordance with the proviso to regulation 32, these assets cannot be sold. Yet, the Liquidator has put up these assets for sale.

- 3.4** That the sale is important in terms of the sale notice. The sale notice declares that the Title Deeds and the Share Certificates are in the custody of Alliance and Application for recovery thereof is pending and in accordance with the terms of the Sale Notice, upon receipt of Consideration, the Liquidator has covenanted to make over the Title Deeds and Share Certificates and/or possession of the assets to the purchaser. Therefore, it is impossible for the Liquidator to comply with its declared obligations under the sale notice. If the Liquidator is comfortable with this position, it would only mean that Alliance's associates will purchase the assets, whereupon, the Liquidator would not have any difficulty in fulfilling such obligation.
- 3.5** It is submitted that the Sale would have the effect of prejudging I.A. No. 380 of 2021 and I. A. No. 386 of 2021- rendering the same infructuous.
- 3.6** The further Allegation is that the Sale is at an Undervalue. The reserve price of 77,500 shares is Rs. 9.21 crores which makes the price per share Rs. 1188/-. This is obviously the book value of the shares. The purported rights issue, also at book value, was at Rs. 1155/- and Rs. 1100/- which can be verified from the records of CP No. 15 of 2022, I. A. No. 847 of 2021 and I. A. No. 850 of 2021, all pending shares of such large quantities totalling to about 48.14% being sold at book value, is an undervalued sale. In fact there would be premium including control premium applicable to shareholding of this nature. For a sum of 9.2 Crores, Alliance through its stooge would acquire shares which are easily worth in excess of Rs. 50 crores giving purchaser about 50% rights in Alliance. It is alleged that the I.A. No. 847 of 2021, I.A. No. 850 of 2021 and CP No. 15 of 2022, all proceedings where these two

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rights issues are under challenge should be decided first. There is an Order dated 27th September passed by The Hon'ble National Company Law Tribunal whereby rights issues have been made subject to final outcome of further orders. If Liquidator succeeds in this application or if the Applicant succeeds, the sale will be of 48.14% shares in Alliance. Presently, it is for 25.83% shares in Alliance.

3.7 It is alleged that the valuation report is not disclosed whereas under Regulation 35 of the Liquidation Process Regulations, 2016, valuation is to be done by two valuers and an average obtained. The quoting of Reserve Price of Rs. 9.21 crores cannot be sustained.

4. Per Contra the Liquidator would submit as under:

4.1 That this instant IA has been filed seeking stay of the sale of land and shares on 14th February 2023 whereas land has not been auctioned on 14th February 2023. The Liquidator as such is not dealing with the issues of land but restricting his submissions in regard to the 77,500 shares owned by the CD in Alliance Broadband irrespective of whether it forms 25.13% or 48.14%.

4.2 On the question that whether Liquidator can sell the shares it is contended that the shares to be sold were pledged by the CD to Alliance Broadband in April 2017. The pledge arrangement is over. The initial loan for which the pledge was created has been repaid. The pledge was not renewed for any further loan arrangement. That the pledge agreement dated 7th April 2017 contained a provision that till the time the pledge by CD to Alliance is subsisting, Alliance will not cause any rights issue, though, two rights issue was done by Alliance in 2019 and 2021. Thus, there is no pledge on the shares subsisting.

4.3 That an I.A 386/2021 is filed by RP filed by RP (now Liquidator) against Alliance praying:

- *"Necessary directions upon the Respondent to hand back the physical custody and possession of the 77500 shares of the Respondent Company owned/held by the Corporate Debtor which is being held or retained by the Respondent without any basis"*

It is urged that the RP (now Liquidator) in the said IA has not prayed for adjudication as to whether pledge is subsisting or not. The Liquidator's stand is that there is no pledge

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and hence the physical possession of the said shares should be handed back to the Liquidator. The shares were always a part of the Liquidation Estate. It is further urged that Regulation 21 of the Liquidation Regulation provides for providing a security interest by a secured creditor and Regulation 21A of the Liquidation Regulation provides that if the secured creditor has not discharged its obligations within 90 days from liquidation commencement date, the shares will automatically form part of the Liquidation Estate. Liquidation having commenced on 06.04.2022, the 90 days expired on 06.07.2022. Admittedly Alliance has not performed its obligations contained in Regulation 21A(2) of the Liquidation Regulations and hence as per Regulation 21(3), the said shares have automatically become part of the Liquidation Estate by operation of law. It is argued further that the sale is being conducted on an "as is where is whatever there is where ever there is" basis. The same is stated categorically in the process document. Copies of all cause papers and details of litigation are uploaded in the VDR (Virtual Data Room) to which the auction participants have access. That the possession of the shares are not with the Liquidator is categorically stated in the bid process document at page 102 of the petition. The process document pertains to an auction which includes several other assets (such as plant/machinery and land) possession of which is with the Liquidator. Since it's a composite bid process document, it is stated possession will be handed over on "as is where is basis". There is no inconsistency in the bid process document. That the bidders are participating knowing all the risks and factual aspect. Since, sale is being done on as is where is basis, the new auction participant will continue with the litigation against Alliance, if required. As such, the concern of the suspended board is out of place.

5. It is alleged by the Liquidator that the promoters challenged the order of liquidation of this Adjudicating Authority before the Hon'ble NCLAT and the same was dismissed on 20th September 2022. They filed a civil appeal before the Hon'ble Supreme Court on 3rd November 2022 (after a gap of 1.5 months) and kept the same defective for 3 months till end of January 2023 and the matter was listed before the Hon'ble Supreme Court on 3rd February 2023, when the civil appeal was dismissed. We would further note that the very next date, i.e., on 4th February, 2023, this instant application was affirmed and filed seeking stay on the auction process. During the entire period, the

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suspended board/promoters attempted to thwart the proceedings before this Adjudicating authority on the ground of pending appeals before the higher forum. It is alleged that this frivolous litigation filed without authority attempted to delay the entire liquidation process and frustrate the same, so that the valuation of the assets reduces further.

6. We have noted the rival contentions. The first sale notice dated 6th December, 2022 was never objected to by the applicant. That there was no difference in the reserve price for the CD as a going concern (published on 6.12.22) and the present auction notice (published on 11.1.23) in which the aggregate value of the assts would amount to Rs. 33 Crores (same as going concern sale). It is noticed that the directors are concerned that if the secured financial creditor - CISCO recovers more from the auction sale, then the Applicant's personal liability under their personal guarantee will reduce. The same argument was already argued before the Hon'ble Apex Court, but the Hon'ble Supreme Court completely disregarded their submission/argument and rejected their civil appeal.
7. The liquidation being ordered way back in April 2022 the Liquidator was required to sell the assets of the CD and distribute the proceeds amongst the stakeholders/creditors and complete the process within a year. The concern of the suspended Board is neither comprehended nor countenanced at the behest of the suspended Board, no further delay in liquidation can be allowed.
8. The concern of the applicants that the shares can be sold for around Rs. 45-50 crores whereas the Liquidator is putting up the shares at 9 crores which is the book value is not sustained. The book value of the 77500 shares are Rs. 54.85 lakhs. The average fair value as per IBBI Registered Valuers is Rs. 9.21 Crores and average liquidation value is Rs. 4.61 Crores. The shares have been put up for auction Rs. 9.21 Crores i.e., at the average fair value, hence valuation of shares and quoting of price cannot be faulted.
9. Regulation 21A of the Liquidation Regulation says that if the secured creditor has not discharged its obligations within 30 days from liquidation commencement date 06.04.2022, the shares will automatically form part of the Liquidation Estate. The options available to the secured creditors in liquidation proceedings are the following:

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- Relinquish its security interest to the liquidation estate and realise proceeds from the sale of assets by the Liquidator in the manner specified in Section 33; or
- Realize its security interest under section 52(1)(b)
- Realise its security under SARFAESI Act etc. Therefore, Alliance is directed to handover the certificates in original to the Liquidator within a week from the date of pronouncement of this order.

Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 clearly envisage the following: -

*"21A- **Presumption of security interest-(1)** A secured creditor **shall inform the liquidator of its decision** to relinquish its security interest to the liquidation estate or realise its security interest, as the case may be, in Form C or Form D of Schedule II:*

*Provided that, **where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate**".*

It is explicit therefrom that the decision to realise its security interest shall have to be intimated within 30 days of Liquidation commencement date, or else it **shall be** presumed to be a part of the Liquidation estate.

In the present case, the Liquidation commencement date is 06.04.2022. Alliance having evidently and admittedly failed to its intention to realise its security interest and thereby having failed to discharge its obligation under Regulation 21 A cannot be permitted to retain the shares held as security. Having failed to comply with the provision, it cannot seek the prayer as by the operation of law after 30 days from the date of commencement of liquidation, upon failure of a secured creditor to intimate about its decision of realise its security interest, it shall be deemed to have become a part of liquidation estate.

No provision or authority has been placed on record to show that the timeline prescribed under Section 21 A is not mandatory or that 21A(2) will preceed 21 A (1).

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We have taken a similar view in **I.A.(IB) No. 1687/KB/2022 in C.P(IB) No. 108/KB/2019** i.e. **State Bank of India-vs-UCO Bank and Ors.**

- 10.** Therefore, Alliance is directed to handover the certificates in original to the Liquidator within a week from the date of pronouncement of this order.
- 11.** Accordingly, the prayer fails. In the aforesaid backdrop, we discuss the present application and allow the Liquidator.

1. IVN.P(IBC)/14(KB)2023 Kalyankari Texfab Private Limited seeks leave to intervene in the IA (IB) No.334 of 2023 filed by the Suspended Board of Corporate Debtor (Manthan) having made the full payment of the Earnest Money Deposit (EMD) to participate in the e-auction for sale of assets of Manthan (The Corporate Debtor) in Liquidation.

2. Case in a nutshell:

2.1 Alliance Broadband Services Private Limited (Alliance) granted a loan of Rs.10.20 crores to Manthan Broadband Services Private Limited (Manthan) and Manthan pledged its 77,500 shares to Alliance.

On 18.09.2019, Manthan was admitted to insolvency in CP (IB) No.1634/KB/2018.

On 06.04.2022 order of liquidation was passed in respect of Manthan.

On 11.01.2023 the Liquidator of Manthan invited EOI, inter alia, for sale of the said shares.

Kalyankari Texfab Private Limited, the Applicant herein deposited an earnest money of Rs.90 lacs with the Liquidator to participate in the said e-Auction.

On 14.02.2023 an order was passed by this Tribunal in IA(IB) No.334/KB/2023 permitting e-Auction to be held subject to the outcome of IA(IB) No.334/KB/2023.

At the e-Auction held on 14.02.2023, Kalyankari Texfab Private Limited came out as the highest bidder with a bid of Rs.9.61 crores.

2.2 It is urged that under the provisions of Section 35 of the IBC, the Liquidator is duty bound to take custody and control of all assets, properties, effects and actionable claims of the Corporate Debtor and to sell the same [Section 35 (1) (a) and (1) (f)]. The IBBI (Liquidation Process) Regulations, inter alia, provide that the process of

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liquidation will be completed within a period of one year from the liquidation commencement date [Regulation 44 of the IBBI (Liquidation Process) Regulations]. Whereas a period far in excess of one year has already passed since the liquidation commencement date of 06.04.2022. The period of liquidation was last extended by order of 11.04.2023 and came to an end on 06.10.2023.

2.3 That the Hon'ble NCLAT has repeatedly held that "*the principle of 'maximisation of Asset Value' is to be read in conjunction with the directive of 'time bound process', as made mentioned of in the 'I & B' Code. (COC of Meenakshi Energy Ltd. through State Bank of India vs. Consortium of Prudent ARC Limited & Vizag Minerals and Logistics P. Ltd.)*

3. Ld. Counsel Mr. Rishav Banerjee, for the Director of Suspended Board of Manthan would advance the following arguments:

3.1 The sale of shares must be cancelled as the shares are pledged with Alliance.

3.2 The shares do not form part of liquidation estate and cannot be sold.

3.3 Sale is in violation of Regulation 33 (3) of the IBBI (Liquidation Process) Regulation.

3.4 No valuation has been done of the shares.

3.5 Auction is vitiated by fraud as Kalyankari Texfab Private Limited is a related party.

4. Submissions on behalf of Ld. Sr. Counsel Mr. Joy Saha appearing for **Kalyankari Texfab Private Limited** per contra would submit the following:

4.1 That the claim of the parties with regard to the pledge of shares must necessarily shift to the sale proceeds. Inasmuch as the shares belong to Manthan and Manthan is in liquidation, the said shares must be sold in accordance with the mandate of the Code as embodied in Section 35 (1) (f) of the Code. The disputes between the ex-Directors of Manthan and Alliance with regard to the existence of pledge in respect of the said shares must necessarily shift on to the sale proceeds of the said shares.

4.2 It was agreed that the sale of the said shares would be made on "**as is, where is and whatever is**" basis [Pg. 83 of IA (IB) No.334/KB/2023]. Kalyankari Texfab Private Limited has purchased the said shares on '**as is where is**' basis as such, there is no necessity to adjudicate on the issue as to whether or not the said shares were pledged before approving the sale of the shares. For the proposition that there

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is no requirement on the part of the Court to examine title when property is sold on ‘as is where is’ basis, reliance is placed on *United Bank of India vs. Official Liquidator & Ors. (1994) 1 SCC 575* that –

“14. When the Official Liquidator sells the property and assets of a company in liquidation under the orders of the Court he cannot and does not hold out any guarantee or warranty in respect thereof. This is because he must proceed upon the basis of what the records of the company in liquidation show. It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase.”

4.3 To counter the allegation of the Suspended Promoters that the said shares did not form a part of the liquidation estate and thus could not have been sold by the Liquidator, it was vociferously argued that as on 04.03.2019 a C.S. No.54 of 2019 has been filed by Alliance against Manthan praying, inter alia, for a declaration that the said 77,500 shares are pledged in favour of Alliance. On 06.04.2022 the Liquidation of Manthan commenced and on 06.05.2022, Form-D was filed by Alliance with the Liquidator whereby Alliance opted to realize its own security interest in respect of the said shares. The Liquidator on 06.06.2022 rejected the claim of Alliance to realize its own security interest on the ground that the said issue was sub judice in the pending suit being C.S. No.54 of 2019 as also being sub judice in IA (IB) No.386 of 2021 pending before this Tribunal. Meanwhile on 03.10.2022, the period of 180 days stipulated in Regulation 21A (2) (b) expired. While there was no compliance by Alliance under Regulation 21A (2), the said shares would automatically subsume in the liquidation estate in terms of Regulation 21A (c) of the IBBI (Liquidation Process) Regulations.

4.4 It was asserted that allegation of the Suspended Directors that the sale is in violation of Regulation 33 (3) of the IBBI (Liquidation Process) Regulations is also not tenable.

Regulation 33 (3) envisages the following:

“33 (3). The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor’s related parties and buyers, or the creditors and the buyer and shall submit a report

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to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”

Placing the above position, it was argued that the said regulation applies only to the cases where the liquidator forms an opinion or has reason to believe that there is any collusion between the buyers, related parties etc. Whereas in the present case the liquidator has not formed any opinion or come to any conclusion with regard to the existence of any collusion or fraud.

- 4.5** It was argued that the allegation of the Suspended Directors that no valuation was done is factually incorrect for the Liquidator, in his rejoinder affidavit to IA (IB) No.497/KB/2023, has clarified that valuation of the subject shares have been done in terms of the provisions of IBC and Regulations thereunder, having averred as under:

“36. ... The valuation of 77,500 equity shares was done by IBBI registered valuer and not by the Liquidator. The liquidator had put the average of fair value computed by the registered value as the reserved price.”

- 4.6** That Suspended Directors have not been able to show any irregularity or fraud in the conduct of the auction and in the absence of any allegation of irregularity in the sale process or fraud there can be no reason to set aside the said auction.

- 4.7** It was vehemently denied that Kalyankari is related to Alliance Broadband Services Pvt. Ltd. It was urged that the allegation that Mr. Jagabandhu Raut is related to Mr. Debendra Raut is baseless and false. The concerned person appeared before this Tribunal and denied such allegation.

That mere allegation that Mr. Jagabandhu Raut, a Director of Kalyankari, and Mr. Debendra Raut were Directors in another company being M/s. Raut Foundation, does not make Kalyankari a related party of Alliance.

- 5.** We have considered the rival contentions and perused records. The Applicant being an H1 Bidder who has paid the earnest money to participate in the bid process and would be severally prejudiced if the sale does not go through.
- 6.** We are convinced that the Applicant is a proper and necessary party in IA (IB) No.334 of 2023. However, IA (IB) No.334 of 2023 is already dismissed and hence no order is passed in **Iv.P. No.14 of 2023**, is thus **disposed**.

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7. Urgent Certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.
1. The application **IA (I.B.C)/497(KB)2023** has been preferred by the Liquidator of the Manthan Broadband praying for the following reliefs:
- (a) Take on record the report filed by the Liquidator in connection with the e-auction held on 14th February, 2023;
- (b) Leave of this Tribunal to declare the H1, H2 bidder of the auction held on 14th February, 2023 issue LOI to the successful H1 bidder, receive the balance consideration amount from the H1 bidder and to issue the sale certificate to conclude the sale in accordance with the e-auction process document and in accordance with the law;
- (c) Exclusion of time from 14th February, 2023 till the order permitting the Liquidator to proceed the consequential actions after the e-auction and also seeking liberty to issue revised time-lines on the same date gap as stated in the process document after the permission/liberty is granted to the applicant to proceed with the consequential actions after the e-auction including issue of fresh sale notice for remaining assets of the Liquidation Estate.
2. “It is submitted by the Liquidator that he had published auction notice on 11th January, 2023 putting up sale of the Corporate Debtor, the land, assets and other machineries. Auction was to be scheduled on 14th February, 2023 which was restricted to only 77, 500 shares.
3. Auction notice was challenged by the ex-Directors (ex-Promoters) by way of IA No.334/2023 and a stay was sought for on the said auction.
4. The application was heard at length on 14th February, 2023, this Tribunal passed the following order:
5. The Liquidator submits that since the CIRP is time bound process and in terms of order dated 14th February, 2023 he cannot proceed with the auction without obtaining liberty of this Tribunal.
6. This application has been preferred to seek leave to declare the H-1 and H-2 Bidders and issue LOI to the successful H-1 bidder, receive the balance consideration amount

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from the H-1 Bidder and to issue the sale certificate to conclude the sale in accordance with e-Auction process document and in accordance with law.

7. We have considered the submissions made and the objections raised to the contentions put forth by the Liquidator.
8. In view of dismissal of IA No.334/2023 by way of the order (supra), the present application is allowed with all its prayers made therein.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

Order Signed on the 12th Day of January 2024

A.J.S LRA, Sayon [Steno]