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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 391/2017 with CP(CAA) No. 18/NCLT/AHM/2017
With Gujarat High Court C.A. no. 517/2016**

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.01.2018**

Name of the Company: Pari Stock Trading Pvt Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None present for Petitioner.

Common Order pronounced in open court. Vide separate sheets.


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 10th day of January, 2018.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

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

CP(CAA) No.18 of 2017

With

IA 391/NCLT/AHM/2017

And

CP(CAA) No.19 of 2017

With

IA 392/NCLT/AHM/2017

In the matter of :-

Pari Stock Trading Private Limited
A company incorporated under the
Provisions of Companies Act, 1956
and having its Registered Office at
351, Stock Exchange Building,
Sadar Bazar, Rajkot – 360 001,
Gujarat.

... Petitioner of CP(CAA) No. 18 of 2017
(Transferor Company)

And

Heritage Khirasara Palace Private Limited,
A company incorporated under the
Companies Act, 1956 and having its
Registered Office at :
Khirasia (Ranmalji), Kalavad Road,
Taluka : Lodhika,
Gujarat.

... Petitioner of CP(CAA) No.19 of 2017
(Transferee Company)

Order delivered on 10th January, 2018

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

And


Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Mr. Hiren Trivedi, Advocate, for Mr. Sharvil P. Majmudar, Advocate for the
Petitioner Companies.

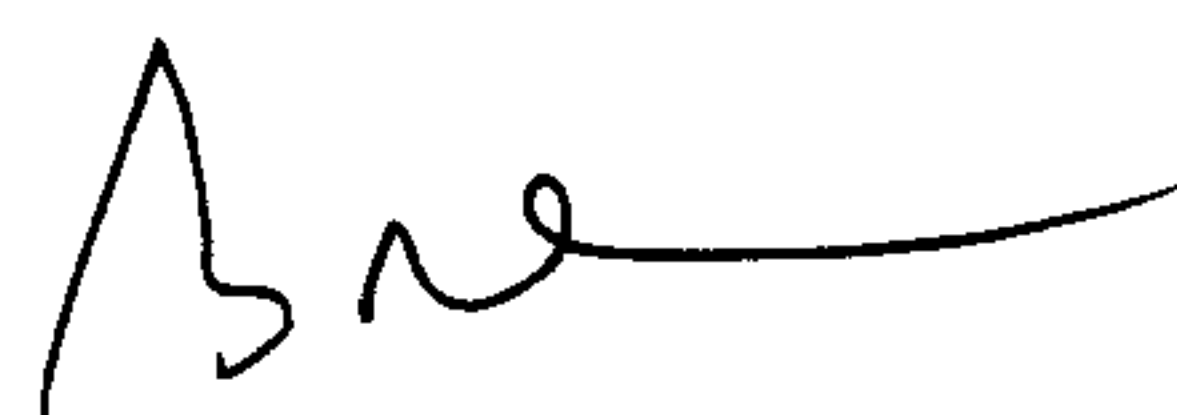
COMMON ORDER

[Per: Bikki Raveendra Babu, Member (J)]

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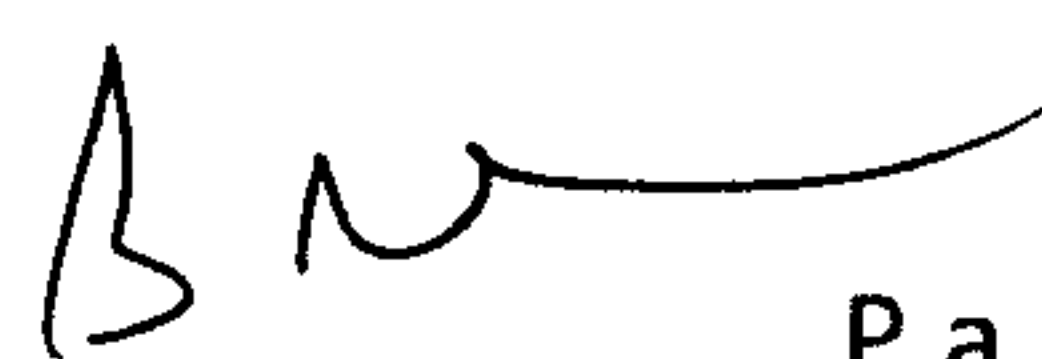
1. These petitions under section 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed scheme of Arrangement (herein after referred to as "Scheme") in the nature of merger/amalgamation of Pari Stock Trading Private Limited (herein after referred to as "transferor company") and Heritage Khirasara Palace Private Limited (" herein after referred to as "transferee company") and their respective shareholders and all concerned.

2. The petitioner transferor company filed an application before the Hon'ble High Court of Gujarat, being Company Application no. 517 of 2016, seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors of the said company. There was no Secured Creditor of the petitioner transferor company as on the date of filing the application. The Hon'ble Gujarat High Court, vide order dated 14.12.2016, dispensed with the meetings of Equity Shareholders and Unsecured Creditors. In the said order it was inadvertently mentioned that the petitioner transferor company did not have any unsecured creditors. The petitioner, therefore, moved an application before the Hon'ble High Court and requested for rectification of the order dated 14.12.2016. The amended order of the Hon'ble High Court dated 18.04.2017 has been placed on record vide additional affidavit which says that the petitioner transferor company does not have any secured creditors.



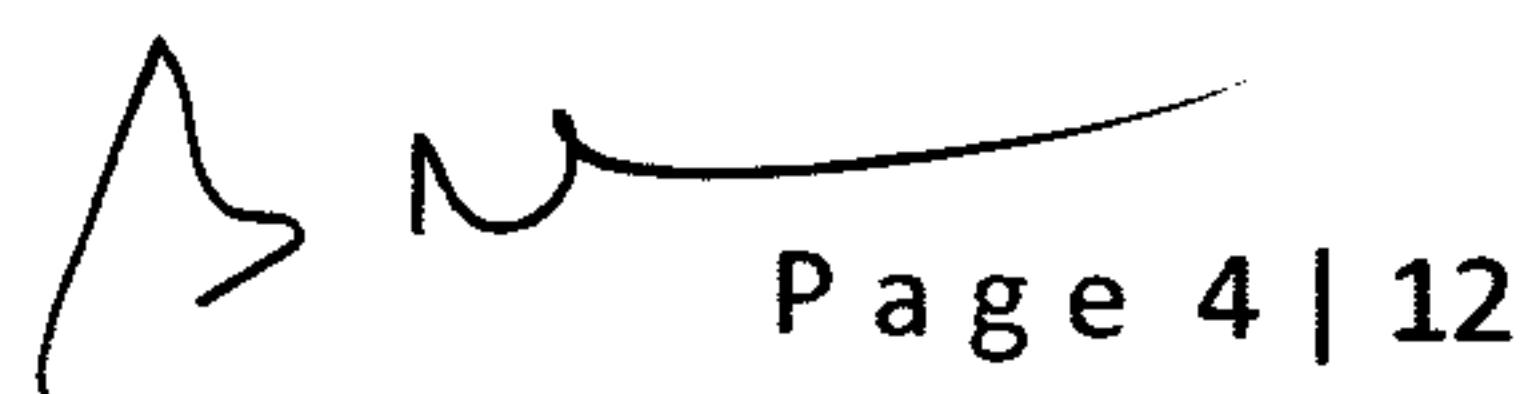
3. The petitioner transferee company had also filed an application before the Hon'ble High Court of Gujarat, being Company Application 518 of 2016, seeking dispensation of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the applicant Company. The Hon'ble Gujarat High Court, vide order dated 14.12.2016, dispensed the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the petitioner transferee Company, for considering the proposed Scheme of merger.

4. Thereafter after the provisions of section 230 and 232 of the Companies Act 2013 were notified on 15.12.2016 and in light of Companies (Transfer of Pending Proceedings) Rules, 2016 the proceedings were transferred to this Tribunal. Thereafter vide order dated 24.04.2017, this Tribunal admitted these petitions and further directed the present petitioner companies to send notice in Form CAA3 along with the copy of the scheme of arrangement, copy of petition and its annexures with the copy of the order of this Tribunal dated 24.04.2017 to statutory authorities, namely (i) the Central Government through the Regional Director, Gujarat, Western Region, (ii) the Registrar of Companies, (iii) the concerned Income Tax Authorities; and (iv) the Official Liquidator, asking them to make representation(s), if any, in case they desired to make, within a period of 30 days from the date of notice, to this Tribunal. It was also stated in the said orders that in case no representation was received by this



Tribunal within stipulated period of 30 days, it would be presumed that the authorities have no representation to make on the proposed scheme of Amalgamation. This Tribunal also ordered that the notice of the hearing of petitions shall be advertised in English Newspaper, "Financial Express", Saurashtra Edition and Gujarati Daily Newspaper, "Saurashtra Aas Pass Daily", Saurashtra Edition not less than ten days before the fixed date of hearing, calling for objections, if any on or after the date of hearing. The petitioner companies were also directed to issue individual notices at least 10 days before the date of hearing to equity shareholders, secured creditors and unsecured creditors (if any), informing the date of hearing and state their objections, if any, before this Tribunal on or before the date of hearing.

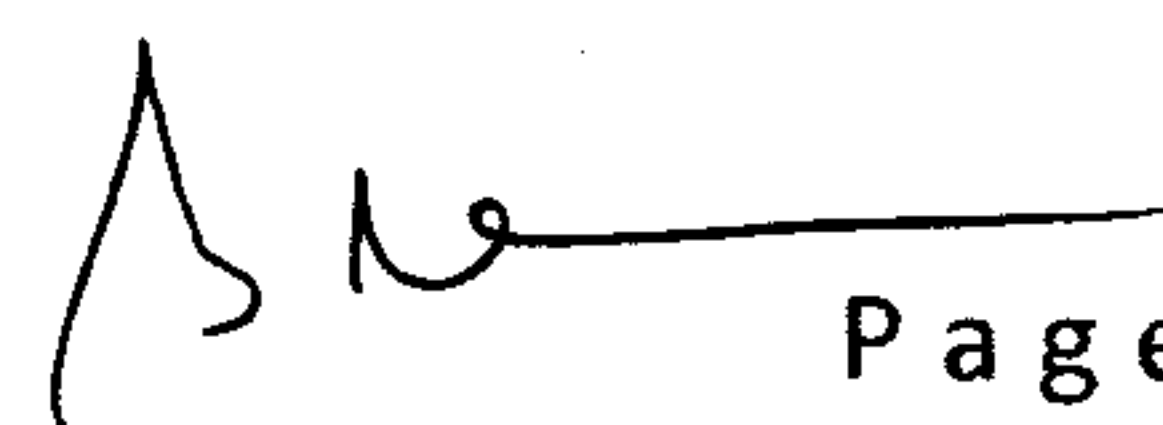
5. Accordingly, the Petitioner Companies published notice of hearing of CP(CAA) 18 and 19 in English Daily, "Financial Express" and Gujarati Daily, "Saurashtra Aas Pass" both Saurashtra editions on 02.05.2017. Notices of hearing of the petitions were served upon statutory authorities, equity shareholders, secured creditors and unsecured creditors, and affidavits of service and publication dated 27.05.2017 have been filed by the Director of petitioner companies. The petitioner transferor and transferee companies have also produced certificates of Statutory Auditors dated 26.05.2017 and 29.05.2017, respectively, certifying that the accounting



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treatment proposed in the scheme of Arrangement is in conformity with the Accounting Standard prescribed under section 133 of the Companies Act, 2013.

6. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed two interim representations dated 28.06.2017 and 17.08.2017. Final representation was filed by the Regional Director on 08.09.2017. The Official Liquidator filed a representation requesting this Tribunal to direct the petitioner transferor company to provide necessary information so as to enable them to file a representation before this Tribunal. In the two interim representations, filed by the Regional Director dated 28.06.2017 and 17.08.2017, information was sought from the petitioner companies for making representations. The petitioner companies were directed accordingly by this Tribunal vide its order dated 13.07.2017. No other representations were received from any other statutory authorities. No representation was received from public. Pursuant to such directions the petitioner transferor company filed the requisite information with the office of Official Liquidator on 20.07.2017 and affidavit of filing such information was filed with this Tribunal on 01.09.2017. The Regional Director vide its common representations dated 28.06.2017 and 17.08.2017 pointed out that complete information as sought by its letter dated 04.05.2017 has not been provided, pursuant to which the petitioner transferee company vide its affidavit dated



31.08.2017 stated that all the information as sought by the Regional Director has been submitted vide letter dated 23.08.2017 and was received by the office of the Regional Director on 29.08.2017. Final representation of Regional Director was received vide representation dated 08.09.2017. The petitioner transferor company pursuant to order of this Tribunal dated 09.10.2017 submitted the information as sought for by the Official Liquidator on 01.11.2017. No representation by Official Liquidator is received thereafter.

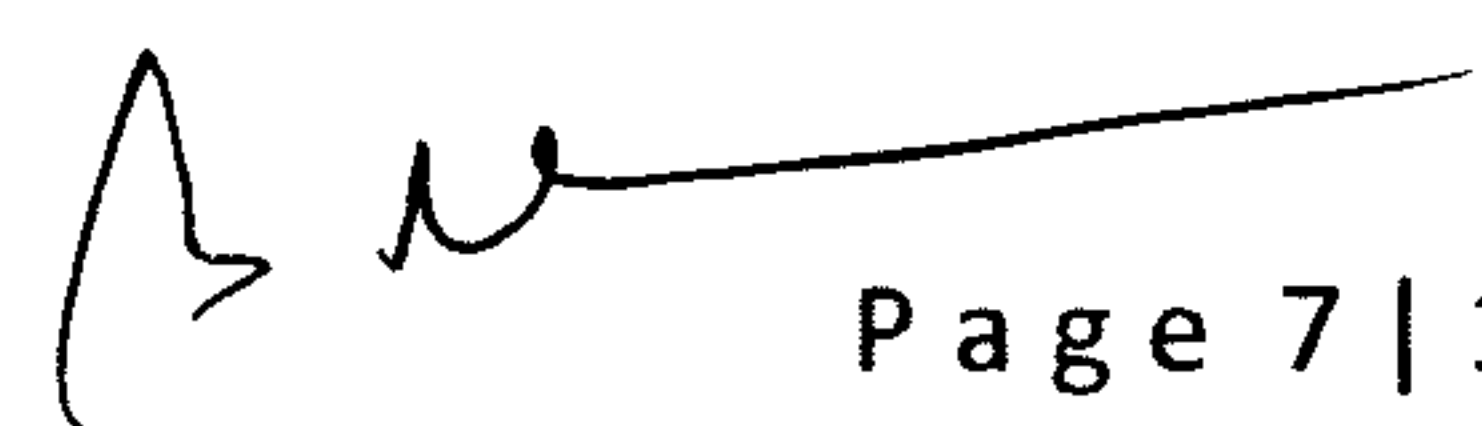
7. The Regional Director has, in the representation dated 08.09.2017 stated that, as per report received from the Registrar of Companies, Gujarat, there were no complaints against the petitioner companies including any complaint/representation against the scheme of Arrangement of the petitioner companies. The petitioner companies have filed reply affidavit dated 04.10.2017 in response to representation dated 08.09.2017 filed by the Regional Director.

8. Heard learned Advocate Mr. Hiren Trived for Mr. Sharvil Majmudar, Advocate for Petitioner Companies.

9. In response to notice to the Regional Director, the Regional Director has filed his detailed representation dated 08.09.2017. On perusal of the same the Regional Director in Paragraph 2(e) has observed that the petitioner companies have not submitted



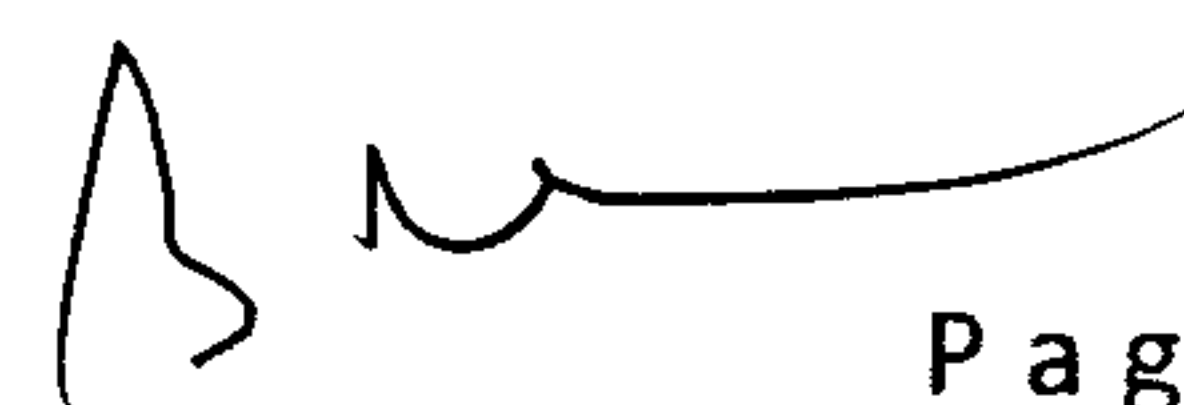
valuation report so as to arrive at the fair exchange ratio. In the same paragraph it was also observed that the certificate of Chartered Accountant in compliance with third proviso to section 232(3) of the Companies Act, 2013 was not furnished. In response to the said observation made by the Regional Director, in paragraph 6 of the reply affidavit it is stated that the valuation report in form of net worth calculation vide letter dated 07.09.2017 was submitted to Regional Director, which was received by the office of the Regional Director on 08.08.2017, a copy of which has also been produced with the reply affidavit. In the same paragraph it is also stated by the petitioner companies that the certificate of Chartered Accountant in compliance with third proviso to section 232(3) of the Companies Act, 2013 has already been submitted before this Tribunal vide letter dated 11.07.2017, Annexure-B to the reply affidavit dated 04.10.2017. With regard to observation made by the Regional Director made in paragraph 2(e) of the representation, it is stated that the remarks of the postal company were not "left". The remark "unclaimed" cannot directly lead to the conclusion that the transferor company is not maintaining its office at the registered office. It is further submitted by the petitioner companies that it is merely a speculation to assume or infer that Transferor Company has not maintained its registered office. To dispel such speculative notions the transferor company's latest master data, a blank letter head mentioning the



address of registered office and the copy of certificate from Saurashtra Kutch Stock Exchange Ltd has been produced along with the reply affidavit dated 04.10.2017.

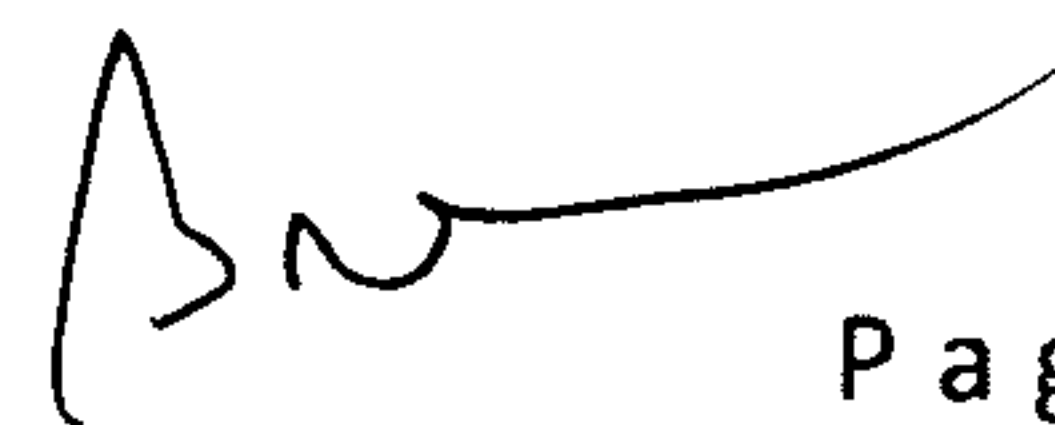
10. With respect to Paragraph 2(f) of the representation of the Regional Director, it is stated that at all the other places the authorized capital of the petitioner transferee company has been mentioned as Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs. 10 each, however only at para 4.2 of the scheme it has been inadvertently mentioned as Rs. 20,00,000/- divided into Rs.2,00,000/- equity shares of Rs. 10 each. In this regard it is also submitted that the petitioner companies have no objections in amending the scheme, if this Tribunal so directs.

11. With regard to Paragraph 2(g) of the representation, it is submitted that upon the scheme becoming finally effective, in consideration of transfer and vesting of undertaking of the Transferor Company in the Transferee Company in terms of the Scheme, the Transferee Company shall subject to the provisions of the scheme and without any further application or deed, issue and allot 2 (two) Equity Shares of Rs. 10/- (Rs. Ten each) each, credited as fully paid up in the capital of the Transferee Company to all Equity Shareholders of the Transferor Company whose names appear in the Register of Members, on a record date to be fixed by the Board of the Transferee Company, for every 1 (one)



Equity Shares of the face value of Rs. 10/- each held by the Shareholders of the Transferor Company. As on date, the issued, subscribed and Paid up share capital of the transferor company is 5,51,937 Equity Shares, and accordingly they shall receive two shares of the transferee company in exchange for every share of transferor company held by them. Thus total shares which would be issued by the transferee company as purchase consideration shall be 1103874 shares i.e. $5,51,937 \times 2$. Thus it is submitted that no mistake has been committed in clause 12.4 of the scheme as the total authorized share capital of the transferee company after the approval of scheme shall be 31,03,874 shares i.e. $(20,00,000 + 11,03,874)$.

12. With respect to observation made by the Regional Director at paragraph 2(h) & 2(i) of the representation, it is submitted that the transferor company has no objection in giving an undertaking that there is no unaccounted money created through securities premium account. It is further submitted that since the premium is appearing in the books of the transferor company, it implies that the same is accounted and there arise no question of creating unaccounted money through such securities premium account. It is further submitted that the security premium is not a taxable income in the hands of the company and therefore there arises no question in paying income tax on the same and that there are no other legal dues payable on securities premium which has been received. It is further

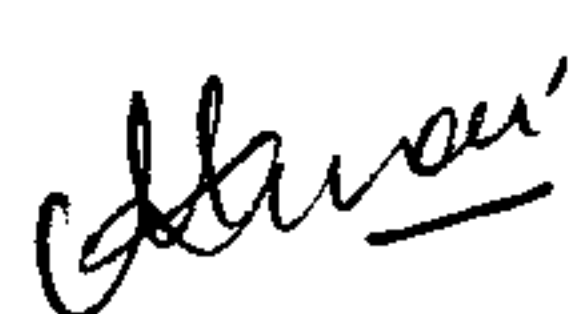


submitted that copy of acknowledgement of notice served to Income Tax Department has already been placed on record of this Tribunal vide its affidavit dated 27.05.2017 and the same is appearing at page 240 of such affidavit filed by the petitioner transferor company. Copy of certificate of Chartered Accountant that no unaccounted money has been created through such security premium has also been produced along with the reply affidavit dated 04.10.2017.

13. With regard to observation made by the Regional Director at paragraph 2(j) of the representation, it is submitted the Registrar of Companies has consented to the scheme and has stated in its report submitted to the office of Regional Director that there is no complaint/representation against the scheme. With respect to Paragraph 2(k) of the representation, it is stated that petitioner companies undertake to ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme; the applicant shall not be absolved from any of its statutory liabilities, in any manner.

14. In light of the aforesaid, this Tribunal is of the view that the observations made by the Regional Director in his representation, stand satisfied.

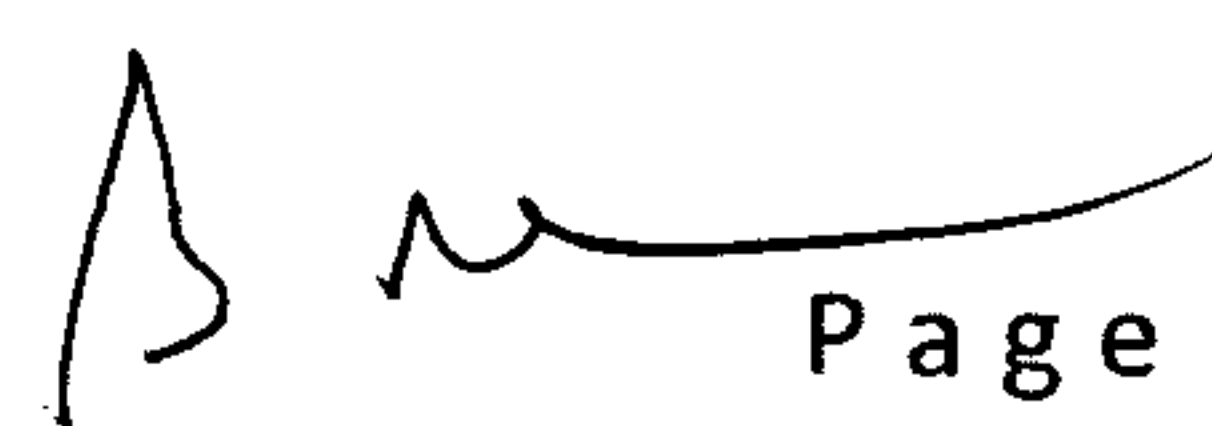
15. No objection has been received from the public at large pursuant to publication of notice of hearing of newspaper.



16. The petitioners, thereafter, filed applications, being IA 391 NCLT/AHM/2017 and IA 392 NCLT/AHM/2017 seeking permission of this Tribunal to amend clause 4.2 of the Scheme, in light of the observation made by the Regional Director in paragraph 2(f) of his representation, to the effect that, the authorized share capital of the transferee company should be read as Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs. 10 each instead of Rs. 20,00,000/- divided into 2,00,000 equity shares of Rs. 10 each. The applicant companies have annexed resolutions passed by the Board of Directors of the applicant companies at Annexure-A to the Applications. Considering the averments made in the applications and the resolution passed by Board of Directors of both the companies, this Tribunal is of the view that the Interlocutory Applications deserve to be allowed.

17. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of section 230 and 232 of the Companies Act, 2013 are satisfied. The scheme appears to be genuine and *bona fide* and in the interest of Shareholders and Creditors.

18. In the result, these Petitions and the Interlocutory Applications are allowed. The petitioners are permitted to amend





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clause 4.2 of the Scheme to the effect that the authorized share capital of the transferee company should read as Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs. 10 each instead of Rs. 20,00,000/- divided into 2,00,000 equity shares of Rs. 10 each. The amended scheme of Arrangement, which is produced as Annexure-B to the Interlocutory Applications, is hereby sanctioned and it is declared that same shall be binding on the Petitioner Companies, namely, Pari Stock Trading Private Limited ("transferor company") and Heritage Khirasara Palace Private Limited ("transferee company") and their respective shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Transferor Company, namely, Pari Stock Trading Private Limited shall stand dissolved without winding up.

19. Filing and issuing of drawn up order as dispensed with. All concerned authorities to act on a copy of this order along with Scheme duly authenticated by Registrar of this Tribunal. The Registrar this Tribunal shall issue the certified copy of this order along with Scheme immediately.

20. These Company petitions are disposed accordingly.


Ms. Manorama Kumar,
Member (J)

 10.1.18
Bikki Raveendra Babu,
Member (J)

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