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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 2/NCLT/AHM/2018
CA(CAA) No. 104/NCLT/AHM/2017**

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 08.02.2018**

Name of the Company: Seabird Marine Services (Gujarat) Pvt. Ltd.
Cargo Consultancy Services (India) Pvt. Ltd.
Triton Ventures Pvt. Ltd (Joint Application).

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>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar

2.

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioners.

Common order pronounced in open court. Vide separate sheets.



MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 8th day of February, 2018.



BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

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

CP(CAA) No. 2 of 2018

And

CP(CAA) No. 3 of 2018

In the matter of :-

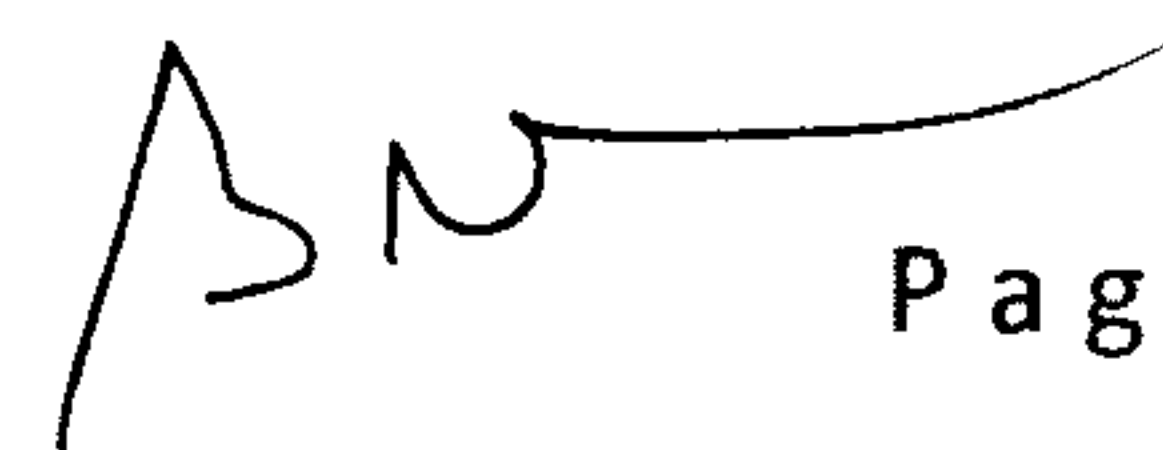
1. Seabird Marine Services Private Limited,
(CIN : U63010GJ1996PTC31337)
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at :
215/218, Venus, Opp. Cricket
Bungalow, Jamnagar,
Gujarat – 361 001. ... Petitioner of CP(CAA) No.3 of 2017
(Transferor Company)
2. Seabird Marine Services (Gujarat)
Private Limited,
(CIN : U74999GJ2017PTC095748)
A company incorporated under the
Provisions of the Companies Act, 2013
and having its registered office at :
217, Venus, Opp. Cricket Bungalow,
Jamnagar,
Gujarat – 361 001.
3. Cargo Consultancy Services (India)
Private Limited,
(CIN : U74140GJ1999PTC096116)
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at :
217, Venus, Opp. Cricket Bungalow,
Jamnagar,
Gujarat – 361 001.
4. Triton Ventures Private Limited,
(CIN : U74900GJ2016PTC096114)
A company incorporated under the
Provisions of the Companies Act, 2013
and having its registered office at :
217, Venus, Opp. Cricket Bungalow,
Jamnagar,
Gujarat – 361 001. ... Petitioners of CP(CAA) No.2 of 2018
(Transferee/ Resulting Companies)

Order delivered on 8th February, 2018

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

And

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



Appearance:


Mrs. Swati Soparkar, Advocate for the Petitioner Companies.

COMMON ORDER

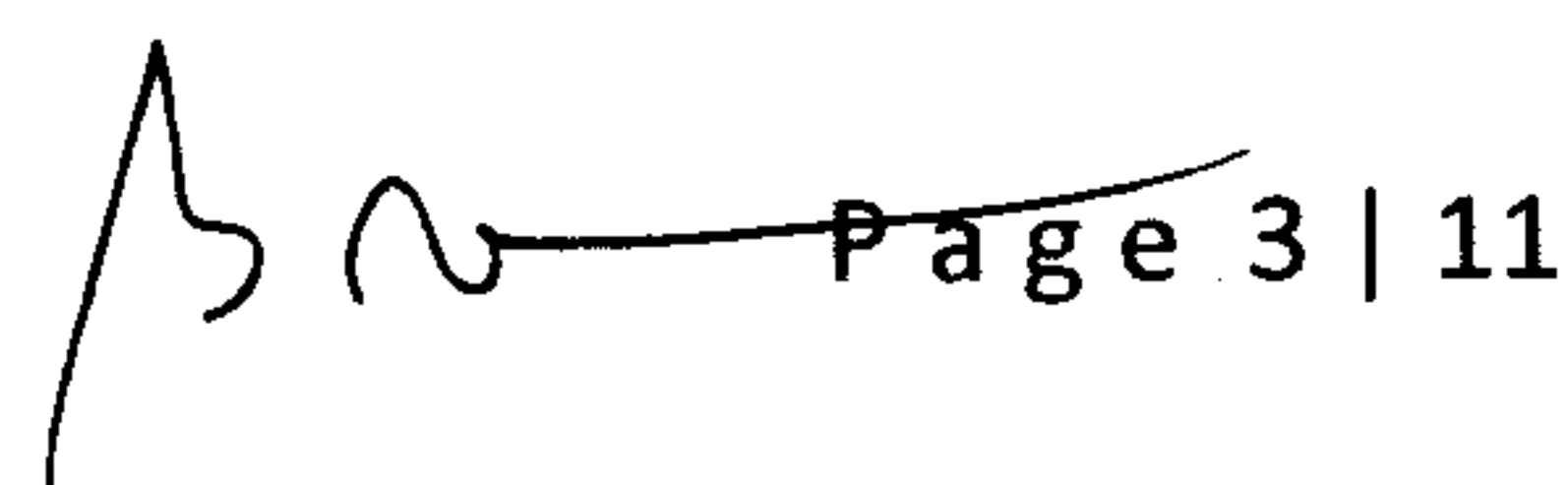
[Per: Bikki Raveendra Babu, Member (J)]

1. This is a common order on two separate petitions, one filed by the Transferor company and another joint petition filed by three Resulting Companies, under Section 230 and 232 of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement in the nature of De-merger and transfer of three different undertakings of the Seabird Marine Services Private Limited (Transferor Company) respectively to three Resulting Companies, namely, Seabird Marine Services (Gujarat) Private Limited ("Resulting Company No.1"), Cargo Consultancy Services (India) Private Limited ("Resulting Company No.2") and Triton Ventures Private Limited ("Resulting Company No.3").

2. It has been submitted that all the petitioner companies belong to one Parekh group under the management and control of the members of the Parekh Family. With the growth of the business and induction of the next generation of the Parekh Family branches, increasing differences arose in the management of the business and vision for growth of the same. A Memorandum of Understanding dated 25th March, 2017 (hereinafter, "the Family Settlement") has been entered into

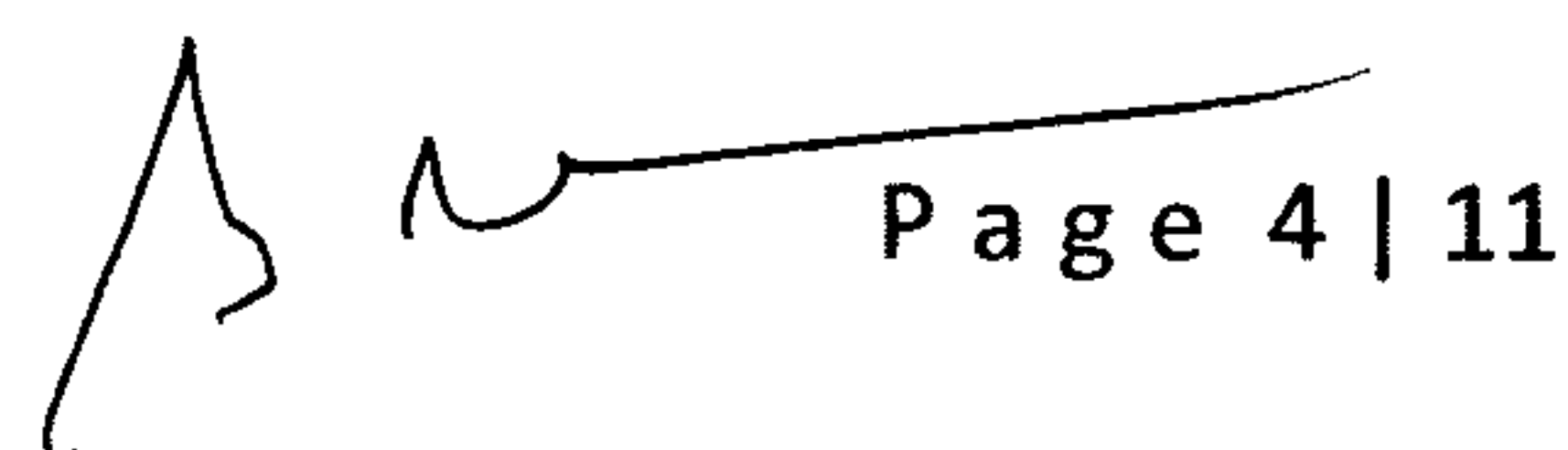
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between all the members of the Parekh Family recording the moral understandings and Family Arrangement arrived at by the Parekh Family members to alleviate such differences and to crystallize the ownership of the Parekh Family Branches of the businesses and the manner in which the businesses were to be conducted. The present Scheme is part of the arrangement concerning the organization/ reorganization/ structuring/ restructuring of the Parekh Family Businesses to give effect to the Family Settlement arrived at by the Parekh Family members to avoid the differences and maintain continued peace and harmony amongst the Parekh Family members. The Petitioner Transferor Company is mainly engaged in the business of establishing, maintaining and operating of container freight stations (CFS) and warehouses. Currently, it operates CFS at JNPT (Maharashtra), Mundra and Hazira (both in Gujarat) and warehouses at Bhiwandi (Maharashtra), Kandla and Mundra (both in Gujarat). The streamlining and crystallization of the ownership and management of the said Transferor Company would be in the best interests of the Company and the continued peace and harmony amongst the Parekh Family members would ensure the growth and focus of the Parekh Family Members on the business of the said Company. By way of the present Scheme, the members of the Parekh Family have decided to demerge various undertakings of the Transferor Company to be transferred to the Resulting Companies, in a manner that would appropriately crystallize the next generation family members'

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stake/s in the businesses of the various undertakings transferred to the Resulting Companies, and, consequently, the businesses of the Transferor Company by giving each branch control of certain businesses and retaining certain businesses jointly with shareholding in proportion to the entitlement of each branch of the Parekh Family. Accordingly, the present scheme aims/deals with demerger of three (3) undertakings of the Transferor Company into three (3) Resulting Companies so as to give effect to the Family Settlement arrived at between the members of the Parekh Family.

3. The said petitioner companies had filed the proceedings before this Tribunal in form of two separate Applications. An Application was moved by the Transferor Company, being CA CAA No. 103 of 201, seeking dispensation of the meeting of the Shareholders as all of them had approved the Scheme in form of the consent letters on affidavits, whereas directions were sought for holding separate meetings of Secured and Unsecured Creditors of the Transferor Company for the purpose of seeking their approval to the Scheme. Pursuant to the order dated 10th October 2017 passed in the said application, the notices were duly served upon all the Secured and Unsecured Creditors along with the Explanatory Statement, copy of Scheme, Form of Proxy etc. The notice for convening the meetings was also published in newspapers viz. English daily, Business Standard Ahmedabad Edition and Gujarati daily, Gujarat Samachar, both Ahmedabad



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and Rajkot Editions on 2nd November 2017. An affidavit of service and publication dated 17th November 2017 was filed by Mr. Naresh Khatau Parekh, the alternate Chairman appointed by this Tribunal. The said meetings were duly convened on 5th December 2017. The proposed scheme was approved unanimously by both the Secured and the Unsecured Creditors, present and voted at respective meetings. The Chairman appointed by this Tribunal has filed a report on affidavit dated 8th December 2017.

4. In case of the three Resulting Companies, a joint application being CA(CAA) no. 104 of 2017 was filed seeking dispensation of the meetings of the Equity Shareholders, in light of the consent letters on affidavits from all the shareholders placed on record. It was submitted that all the three Resulting Companies had no secured and/or unsecured creditors as on the date of application, as certified by Chartered Accountant. This Tribunal, vide order dated 10th October 2017, dispensed with meetings of Equity Shareholders of all the three companies. This Tribunal also held that meetings of the Secured and Unsecured Creditors were not necessary.

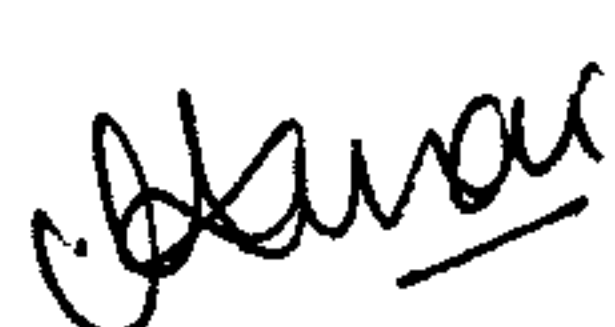
5. The petitioner companies, thereafter, filed the present petitions seeking sanction of the Scheme. This Tribunal, vide order dated 10th January, 2018, while admitting the petitions, fixed the date of hearing as 6th February, 2018. Directions were issued to publish notice of hearing of the petitions in newspapers viz. English daily, Business Standard and Gujarati daily, Gujarat



Samachar, both Ahmedabad editions, for all the companies, at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petitions to the statutory authorities viz. (i) the Central Govt. through Regional Director- North Western Region and (ii) the Registrar of Companies, at least before 10 days of the date of hearing of the petition.

6. Pursuant to the aforesaid directions, notices were duly served by the petitioner companies on the statutory authorities on 19th January 2018 and publications were duly made in the respective newspapers on 18th January 2018. Respective affidavits of service and publication dated 24th January 2018 confirming the same have been placed on record.

7. Vide the first order dated 10th October 2017, the original Applicant companies were also directed to serve Notice of the Scheme to the Regulatory Authorities-viz. (i) Central Govt. through the Regional Director, North-Western Region, (ii) Registrar of Companies, Gujarat, and (iii) concerned Income Tax Authorities; along with Notice, Explanatory Statement and other requisite documents and disclosures. Accordingly, notices were duly served on all the authorities on or before 30th October 2017. Affidavit dated 17th November 2017 confirming the compliance of the said directions for service of notice on all the above Regulatory Authorities along with the acknowledgments for the

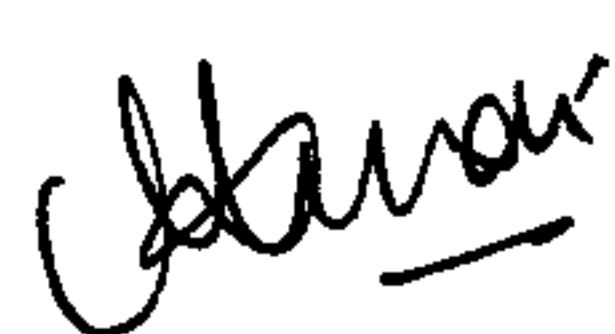


same has been filed with this Tribunal. In response to the said notice, the Regional director filed his representation in the form of an affidavit dated 4th December 2017. No representation was received from the Income Tax Authorities or any other regulatory authority. The Petitioner Companies have filed their responses to the representation of the Regional Director separately in both petitions in the form of Additional Affidavit dated 30th January 2018.

8. Heard Mrs. Swati Soparkar, learned Advocate appearing for the petitioner companies.

9. The Regional Director, vide paragraphs 2 (a), (b) and (c), of the representation, has confirmed the nature of proposal, and consideration as confirmed by the Chartered Accountant as well as Rationale of the proposed arrangement.

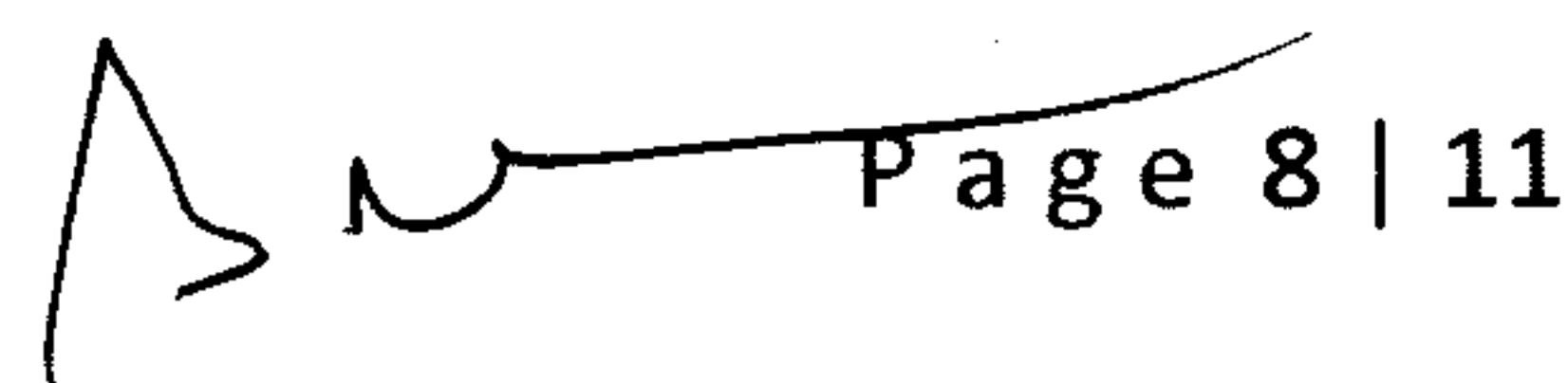
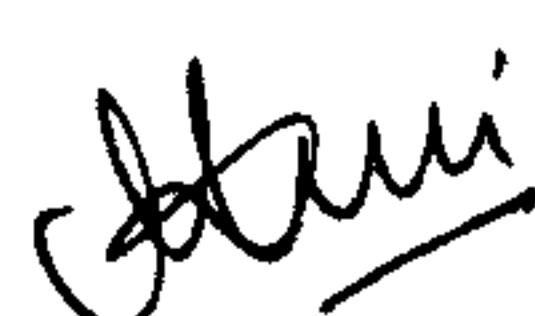
9.1 Vide paragraph 2(d), the Regional Director has sought disclosure of details of assets and liabilities of all three undertakings proposed to be demerged and transferred to the Resulting Companies. In this regard, the petitioners have placed on record the divisional balance sheet as on 1st March 2017 giving all the desired details. In light of the above, this Tribunal is of the view that the observation of the Regional Director stands satisfied.



9.2 The Regional Director, vide para 2 (e) of the representation, has observed that the petitioner companies may be directed to ensure compliance of the Section 2 (19AA) of the Income Tax Act. In this regard, it is submitted that vide Clause 2.4 of the Scheme, the said compliance has been envisaged and provided. The petitioner companies have further reconfirmed that the petitioner companies shall comply with the said provision of the Income Tax Act.

9.3 The next observation made by the Regional Director vide paragraph 2 (f) pertains to the treatment towards the employees of the Transferor Company. It has been pointed out that the Scheme envisages transfer of all permanent employees of the three undertakings of the Transferor Company, being demerged; to be treated as the employees of the respective Resulting Companies and the Scheme is silent about the status of the employees other than permanent employees. In this regard, it has been clarified that factually there are no employees of the Transferor Company, other than permanent employees and, hence, it is not necessary to make any modification in the Scheme.

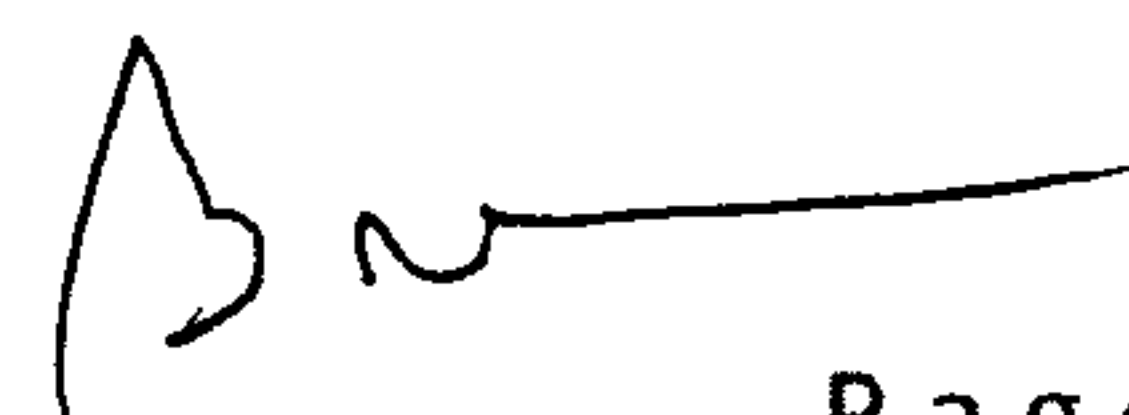
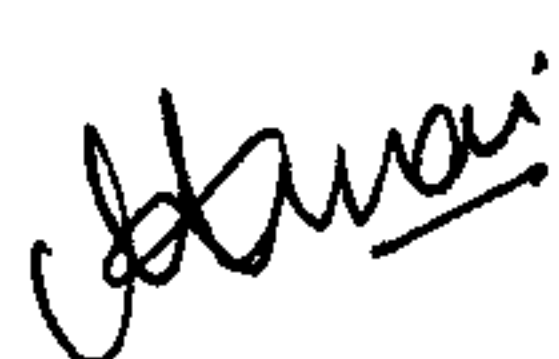
9.4 Vide paragraph 2(g) of the representation, the Regional Director has stated that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director, vide paragraph 2 (h), has

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confirmed that he has no other observation/submission to make and that the proposed Scheme of Arrangement is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large. This Tribunal is, therefore, of the view that all the issues raised by the Regional Director through its representation have been satisfactorily answered.

10. No representation has been received from the Income Tax Authorities. Hence, it is assumed that the said authorities have no objection to the proposed Scheme. However, vide the respective Additional affidavits dated 30th January 2018, the petitioner companies have confirmed that on the basis of the records of the Petitioner Companies, as on 30th September 2017, there is no undisputed outstanding demand for income tax for any of the Petitioner Companies. The Petitioner Companies have further undertaken to comply with the applicable provisions of the Income Tax Act.

11. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of Chartered Accountant dated 30th June 2017, confirming that the accounting treatment envisaged in the said scheme of Arrangement in the books of the Petitioner Companies is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act,

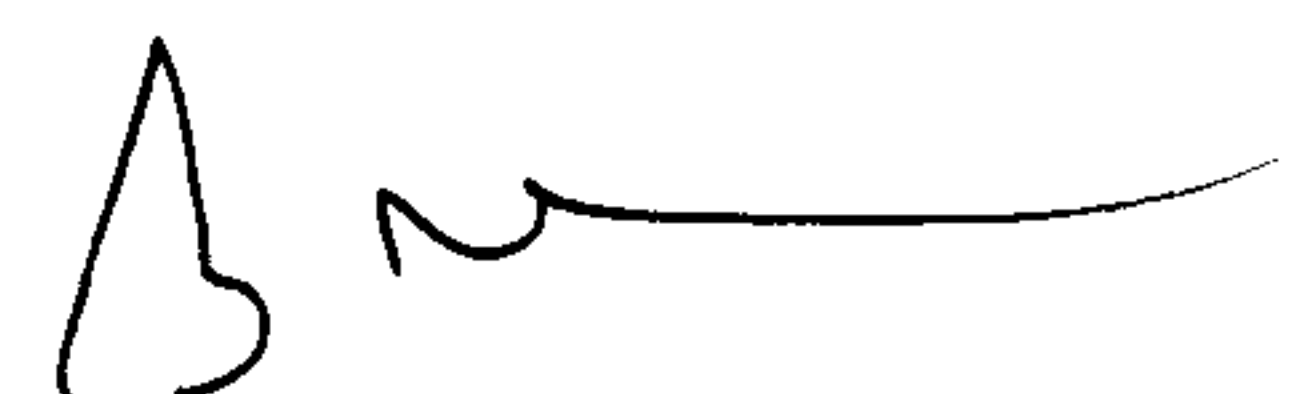
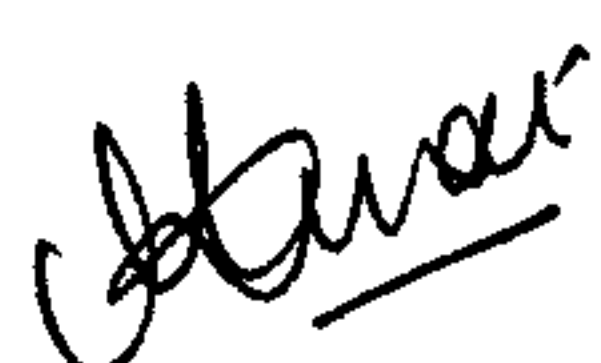


2013. The same have been placed on record as Annexure-‘J’ and ‘L’ to the respective petitions.

12. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The proposed Scheme of Arrangement appears to be genuine and *bona fide* and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

13. As a result, the petitions, being C.P. (CAA) Nos. 2 and 3 of 2018, are hereby allowed. The Scheme which is at Annexure- ‘F’ to both the petitions is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders, secured and unsecured creditors and all concerned under the scheme.

14. Filing and issuance of drawn up order is hereby dispensed with. All concerned authorities to act on a copy of this order along with the scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the authenticated copy of this order along with the Scheme immediately.



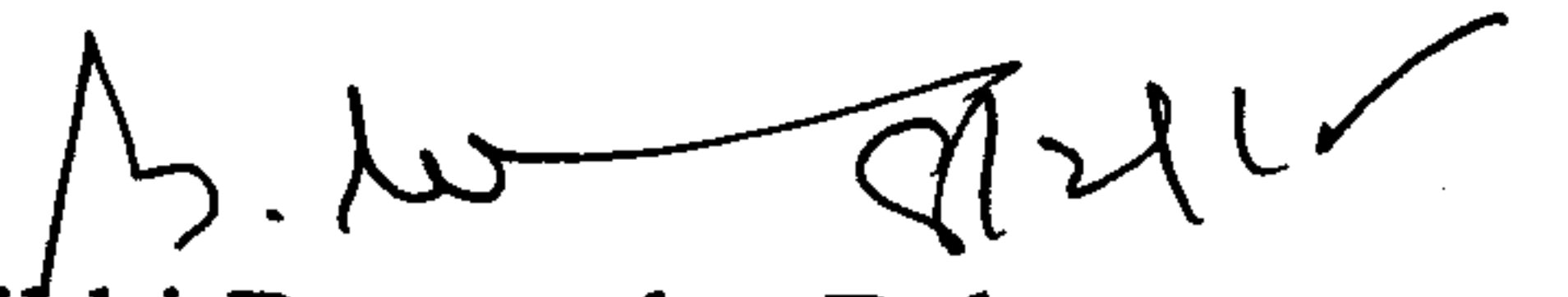
15. The petitioner Transferor company is further directed to lodge a copy of this order, the schedule of immovable assets, all registrations and benefits arising out of all relevant notifications of each Demerged Undertaking of the Transferor company proposed to be transferred; as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

16. The Petitioner companies are directed to file a copy of this order along with a copy of the scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

17. These petitions are disposed of accordingly.



Ms. Manorama Kumar,
Member (J)



Bikki Raveendra Babu,
Member (J)

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