

B-1

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA (CAA) No.97/NCLT/AHM/2017

Coram:

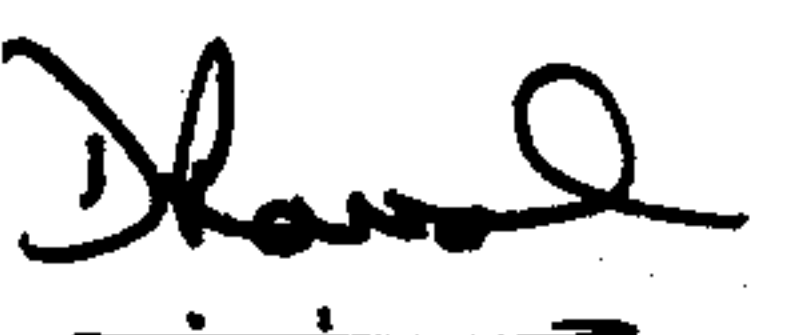

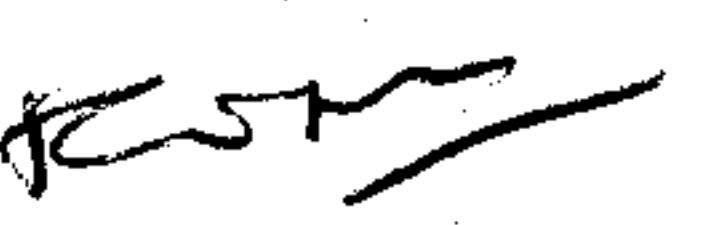

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.02.2018**

Name of the Company: National Multi-Commodity Exchange Of India 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>
--------------	-------------------------------	--------------------	-----------------------	------------------

1.	MS. Dharmishta Raval	Advocate	Applicant	
2.	Mrs. Yuvraj Thakore	Advocate	Applicant	
3.	NAVIN PAHWA WITH RITU SHAH	SR. ADV ADV	Applicant	
4.	Hitesh Buch	PCS	for NSE objector	

ORDER

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Dharmishta Raval with Learned Advocate Mr. Yuvraj Thakore with Learned Advocate Ms. Ritu Shah present for Applicant. Learned PCS Mr. Hitesh Buch present for objector.

Order pronounced in open court. Vide separate sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 21st day of February, 2018.

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

CA (CAA) No.97/NCLT/AHM/2017

In the matter Amalgamation of :-

National Multi-Commodity Exchange
Of India Limited
(CIN: U75131GJ2001PLC040281)
Having its registered office at :
Office No.4, 4th Floor,
H.K. House, Behind Jivabhai
Chambers, Ashram Road,
Ahmedabad - 380 009.

... Applicant
(Amalgamating Company)

Order delivered on 21st February, 2018

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

Appearance:

Mr. Navin Pahwa, Senior Advocate with Ms. Dharmista Raval, Mr. Yuvraj Thakore and Ms. Ritu Shah Advocates and Mr. MC Gupta, PCS for the Applicant.

ORDER

1. Heard Learned Senior Counsel Mr. Navin Pahwa with learned Advocates, Ms. Dharmishta Raval of M/s Raval & Raval, Advocates and Mr. Yuvraj Thakore for the Applicant Amalgamating Company. Perused the application and the supporting affidavit of Mr. Anil Kumar Mishra, the authorized signatory of the Applicant Amalgamating Company, dated 1st September, 2017 and the documents annexed thereto.

2. This is an application filed by National Multi-Commodity Exchange of India Limited (hereinafter known as the Applicant Amalgamating Company) under Sections 230-232 of the Companies Act, 2013 ('the Act'). National Multi-Commodity Exchange of India Limited is incorporated under Companies Act, 1956 with their registered office in Ahmedabad.



3. National Multi-Commodity Exchange of India Limited has filed this application seeking dispensation of the meeting of Secured Creditors and seeking direction for convening meeting of the Equity Shareholders and Unsecured Creditors in respect of the Scheme of Amalgamation of National Multi-Commodity Exchange of India Limited ('NMCE' or 'the Applicant Amalgamating Company') with Indian Commodity Exchange Limited ('ICEX' or 'the Amalgamated Company') and their respective shareholders ('Scheme') with effect from the Appointed Date with the Amalgamated Company on the agreed terms and conditions as set out in the scheme annexed at **Annexure – E** in accordance with Sections 230 to 232 of the Act and other applicable provisions of the Act.

4. The Board of Directors of National Multi-Commodity Exchange of India Limited in its meeting held on 30th June, 2017, passed a resolution approving the proposed Scheme placed before the Board. It is stated in the Application that no investigation has been instituted or are pending in relation to the Applicant Amalgamating Company. It is further stated that the Provisions of Competition Act, 2002 and the provisions of FEMA/RBI will not be attracted under the present Scheme of Amalgamation. The Applicant Amalgamating Company has filed Annual Report dated 31st March, 2017. The Applicant Amalgamating Company has also filed a Certificate dated 28th August, 2017 issued by Chartered Accountant under Section 133 of the Act.

5. In this Company Application the Applicant Amalgamating Company has prayed for convening separate meetings of the Equity Shareholders and Unsecured Creditors for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s), the Scheme and for issuing appropriate directions incidental for holding of such meetings.



6. It is stated that there are no Secured Creditors in the Applicant Amalgamating Company. Therefore, this Tribunal is of the view that the meeting of Secured Creditors of the Applicant Amalgamating Company, or the purpose of considering and, if thought fit, approving with or without modification(s), is not required to be called for.

7. Shri Kailash Gupta on behalf of Neptune Overseas Limited has filed objection to the Company Application filed by the Applicant Company. Various proceedings before Gujarat High Court and Hon'ble Supreme Court were placed on record to submit that the application by the Applicant Company should not be allowed by this Tribunal. By an order dated 31st January, 2018 this Tribunal has passed a detailed order disposing of the objections of the objector giving him liberty to raise all the objections in respect of Scheme of Merger of NMCE with ICEX in the petition seeking sanction of the Scheme and hence they are not being separately dealt with in this order. However, it is observed that the approval of the Scheme, even if made by the shareholders and Creditors of NMCE, it is subject to the objections of Neptune Overseas Limited and the decision of the Honourable Supreme Court of India in SLP Nos.10225-10227 of 2012 and allied matters.

8. Having Considered the material on record, this Tribunal passes the following order:-

a) A meeting of the Equity Shareholders of the Applicant Amalgamating Company shall be held on Thursday, April 5th, 2018 at 12:00 noon at Office No. 4, 4th Floor, H.K. House, Behind Jivabhai Chambers, Ahmedabad - 380009, Gujarat for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.



- b) A meeting of the Unsecured Creditors of the Applicant Amalgamating Company shall be held on Thursday, April 5th, 2018, at 2:30 p.m. at Office No. 4, 4th Floor, H.K. House, Behind Jivabhai Chambers, Ahmedabad – 380009, Gujarat, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- c) At least one month before April 5, 2018, i.e. the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English daily, Indian Express, Ahmedabad edition and Gujarati Daily thereof in Gujarat Samachar, Ahmedabad edition. The publication shall indicate the time within which copies of scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Amalgamating Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant Amalgamating Company or at the office of its Advocates, i.e. Ms. Dharmishta N. Raval, 21-23 Laxmi Chambers, Near Old High Court, Off Income Tax Road, Ahmedabad – 380009 in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- d) At least one month before the date of the meeting of the Equity Shareholders to be held as aforesaid, a notice in Form No. CAA 2 convening the said meeting, indicating the day, date, place and time aforesaid, together with a copy of the scheme, a copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the Equity Shareholder of the Applicant

Amalgamating Company at their respective registered or last known addresses either by Registered post or Speed Post/Airmail or by Courier or E-Mail or Hand Delivery. The Notice shall be sent to the Equity Shareholders of the Applicant Amalgamating Company with reference to the list of the persons appearing on the record of the Applicant Amalgamating Company as on 31st January, 2018. The aforesaid date would be the date determining the eligibility to vote by the Equity Shareholders.

e) In addition, at least one month before the date of the meeting of the Unsecured Creditors to be held as aforesaid, a notice convening the said meeting, indicating the day, date, place and time , as aforesaid, together with a copy of the scheme, a copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the Unsecured Creditors of the Applicant Amalgamating Company at their respective registered or last known addresses either by Registered post or Speed Post/Airmail or by Courier or E-Mail or hand delivery. The Notice shall be sent to the Unsecured Creditors of the Applicant Amalgamating Company with reference to the list of the persons appearing on the record of the Applicant Amalgamating Company as on 31st January 2018. The aforesaid date would be the date determining the eligibility to vote by the Unsecured Creditors.

f) It is further directed that in the notices for the meeting of the Equity Shareholders and Unsecured Creditors, a mention be made in brief of the fact that Mr. Kailash Gupta has raised an objection to the scheme and that there are various litigations pending before different forums, including the Hon'ble Supreme Court of India.

g) Hon'ble Justice Mr. Kamal Mehta (Retd.) shall be the Chairman/Chairperson of the aforesaid meetings to be held on

Thursday, April 5, 2018 and in respect of any adjournment thereof.

- h) Mr. Mahesh Chand Gupta, Practicing Company Secretary and in his absence Mr. Sparsh M. Gupta, Practicing Company Secretary is appointed as the Scrutinizer for the meetings of the Equity Shareholders and Unsecured Creditors of the Applicant Amalgamating Company.
- i) The Chairman or Chairperson appointed for the aforesaid meetings of the Equity Shareholders and Unsecured Creditors shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the Applicant Amalgamating Company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the Applicant Amalgamating Company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meetings of the Equity Shareholders and Unsecured Creditors by ballot/polling paper at the venue of the meeting of the Equity Shareholders and Unsecured Creditors.
- j) The quorum for the meeting of the Equity Shareholders shall be 5 (Five) and the quorum for the meeting of the Unsecured Creditors shall be 3 (Three) persons present in person.
- k) Voting by proxy/authorized representatives is permitted, provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the Applicant Amalgamating Company at its Registered Office at Office No. 4, 4th Floor, H.K. House, Behind Jivabhai Chambers, Ahmedabad-380 009, not

later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Act.

l) The number and value of the Equity Shareholders and Unsecured Creditors, as the case may be, shall be in accordance with the records or registers of the Applicant Amalgamating Company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be for purposes of the meetings.

m) The Chairman/Chairperson to file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

n) It is further ordered that the Chairman or the Chairperson shall report to this Tribunal on the result of the meetings in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No. CAA.4 within seven working days.

9. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules 2016, the Applicant Amalgamating Company shall send a notice in Form No. CAA.3 along with a copy of the Scheme of Amalgamation, the explanatory statement and the disclosures mentioned under Rule 6, to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, (iii) the Income Tax authorities, (iv) Securities and Exchange Board of India [SEBI] and (v) the Official Liquidator concerned stating that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make

on the proposed scheme. The aforesaid authorities, who desire to make any representation under subsection (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed amalgamation.

10. This Company Application is disposed of accordingly.

Signature.....
Bikki Raveendra Babu, Member (J)

gt