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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CP(CAA) No. 36/NCLT/AHM/2018
CA(CAA) No. 145/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 21.02.2018**

Name of the Company: H Nyalchand Realty Pvt. Ltd.
Vastupal Infrastructure 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.	MS. Dharmishta Raval	Advocate	Petitioners	<u>Dhaval</u>
2.	MS. Yuvraj Thakore	Advocate	Petitioners.	<u>Y. Thakore.</u>

ORDER

Learned Advocate Ms. Dharmishta Raval with Learned Advocate Mr. Yuvraj Thakore present for Petitioners.

Common order pronounced in open court. Vide separate sheets.


MANORAMA KUMARI
MEMBER JUDICIAL


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 21st day of February, 2018.

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

COMPANY PETITION (CAA) NO.36 OF 2018

AND

COMPANY PETITION (CAA) NO.37 OF 2018

AND

COMPANY PETITION (CAA) NO. 38 OF 2018

In the matter of :-

H Nyalchand Realty Private Limited)
incorporated under the provisions of)
the Companies Act, 1956(CIN:)
U45201GJ1994PTC023913) having)
its registered office at 11 th Floor,)
Safal Profitair, Opp Auda Garden,)
Corporate Road, Prahladnagar,)
Ahmedabad- 380015, Gujarat, India	Petitioner of CP
	(CAA) 36 of 2018
	(Amalgamating
	Company - 1)

Vastupal Infrastructure Private)
Limited incorporated under the)
provisions of the Companies Act,)
1956 (CIN:)
U45201GJ2010PTC060845) having	Petitioner of CP
its registered office at G-908, 9th	(CAA) 36 of 2018
Floor, Titanium City Centre, 100 feet	(Amalgamating
Anandnagar Road, Ahmedabad -	Company - 2)
380015, Gujarat, India.	

Safal Infra-Developers Private)
Limited a Company incorporated)
under the provisions of the)
Companies Act, 2013 (CIN:)
U45205GJ2015PTC083783 having)
its registered office at 10 th Floor,)
SafalProfitaire, Opp. Hotel Ramada,	Petitioner of CP
Near Auda Garden, Prahladnagar,	(CAA) 37 of 2018
Ahmedabad - 380015, Gujarat,	(Resulting
India.	Company)

HN Safal Facilities Management)
Private Limited)
(CIN:U45100GJ2011PTC065102)	Petitioner of CP
having its registered office at	(CAA) 37 of 2018
10 th Floor, SafalProfitaire, Opp. Hotel	(Amalgamated
Ramada, Near Auda Garden,	Company - 2)

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Prahladnagar, Ahmedabad -
380015, Gujarat, India.

Safal Realty Private Limited (CIN:
U45209GJ2006PTC048102) having
its registered office at 11th Floor,
Safal Profitair, Opp. Auda
Garden, Corporate Road,
Prahladnagar, Ahmedabad - 380015
Gujarat, India

)
Petitioner of CP
(CAA) 38 of 2018
(Amalgamated
Company-1
/Demerged
Company
/Amalgamating
Company-3)

Order delivered on 21st February, 2018

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

And

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

Appearance:

Ms. Dharmishta N. Raval, Advocate for Raval and Raval Advocates with Mr. Yuvraj G. Thakore, Advocate for the Petitioner Companies.

ORDER

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

1. These petitions under Sections 230 to 232 of the Companies Act, 2013 have been filed seeking sanction of proposed Composite Scheme of Amalgamation, Arrangement and Demerger between H Nyalchand Realty Private Limited (Amalgamating Company-1) Vastupal Infrastructure Private Limited (Amalgamating Company-2) with Safal Realty Private Limited (Amalgamated Company-1/Demerged Company/Amalgamating Company-3) And demerger of project division of Safal Realty Private Limited into Safal Infra-Developers Private Limited (Resulting Company) and the amalgamation of Safal Realty Private Limited with HN Safal Facilities Management

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Private Limited (Amalgamated Company-2) and their respective shareholders and creditors ["Scheme" for short].

2. The Petitioners of the Joint Company Petition No. CP (CAA) 36/NCLT/AHM/2018, i.e. H Nyalchand Realty Private Limited (Amalgamating Company-1) and Vastupal Infrastructure Private Limited (Amalgamating Company-2) had filed Joint Company Application, being CA (CAA) NO. 145 OF 2017, before this Tribunal, seeking dispensation for convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Amalgamating Company 1 and 2. This NCLT, vide its order dated 21st November, 2017, dispensed with convening and holding of the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Amalgamating Company 1 and 2.

3. This Tribunal directed the Petitioner Amalgamating Company – 1 and 2 to issue statutory notice in Form No. CAA3 to (i) the Central Government through the Regional Director, North Western Region; (ii) the Registrar of Companies, Gujarat; (iii) the Income-tax authorities; (iv) the Official Liquidator, asking them to make representations, if any, within a period of 30 days from the date of receipt of such notice, and in case no representation is received by the Tribunal within the stipulated period of 30 days, it should be presumed that the authorities have no representation to make. The Petitioner Company in compliance of the aforesaid order served the notices to the

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Statutory Authorities. The Petitioner Amalgamating Company – 1 and 2 has also filed proof of service of notice vide affidavit dated 16th December, 2017.

4. The Petitioners of Joint Company Petition No. CP (CAA) 37/NCLT/AHM/2018 company i.e. Safal Infra-Developers Private Limited (Resulting Company) and HN Safal Facilities Management Private Limited (Amalgamated Company-2) had filed Joint Company Application, being CA (CAA) NO. 157 OF 2017, before this Tribunal, seeking dispensation for convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Amalgamated Company-2 and Petitioner Resulting Company. This Tribunal, vide its order dated 21st November, 2017, dispensed with convening and holding of the meeting of the Equity Shareholders, Secured and Unsecured Creditors of the Petitioner Amalgamated Company-2 and Petitioner Resulting Company.

5. This Tribunal also directed the Petitioner Amalgamated Company-2 and Petitioner Resulting Company to issue statutory notice in Form No. CAA3 to (i) the Central Government through the Regional Director, North Western Region; (ii) the Registrar of Companies, Gujarat; (iii) the Income-tax authorities; (iv) the Official Liquidator, asking them to make representations, if any, within a period of 30 days from the date of receipt of such notice, and in case no representation is received by the Tribunal within the stipulated period of 30 days, it should be presumed that the

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authorities have no representation to make. The Petitioner Company in compliance of the aforesaid order served the notices to the Statutory Authorities. The Petitioner Amalgamated Company-2 and Petitioner Resulting Company has also filed proof of service of notice vide affidavit dated 16th December, 2017.

6. The Petitioner of CP (CAA) 38/NCLT/AHM/2018, i.e. Safal Realty Private Limited (Amalgamated Company-1/Demerged Company/ Amalgamating Company-3) had filed CA (CAA) No. 156 OF 2017 before this Tribunal, seeking appropriate directions for convening meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Amalgamating Company 3. This Tribunal directed for convening the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Amalgamating Company 3.

7. This Tribunal also directed the Petitioner Companies to make publications in English News Paper, Indian Express and Gujarati News Paper, Sandesh. This Tribunal also directed the Petitioner Amalgamating Company – 3 to issue statutory notice in Form No. CAA3 to (i) the Central Government through the Regional Director, North Western Region;(ii) the Registrar of Companies, Gujarat; (iii) the Income-tax authorities; (iv) the Official Liquidator, asking them to make representations, if any, within a period of 30 days from the date of receipt of such notice, and in case no representation is received by the Tribunal within

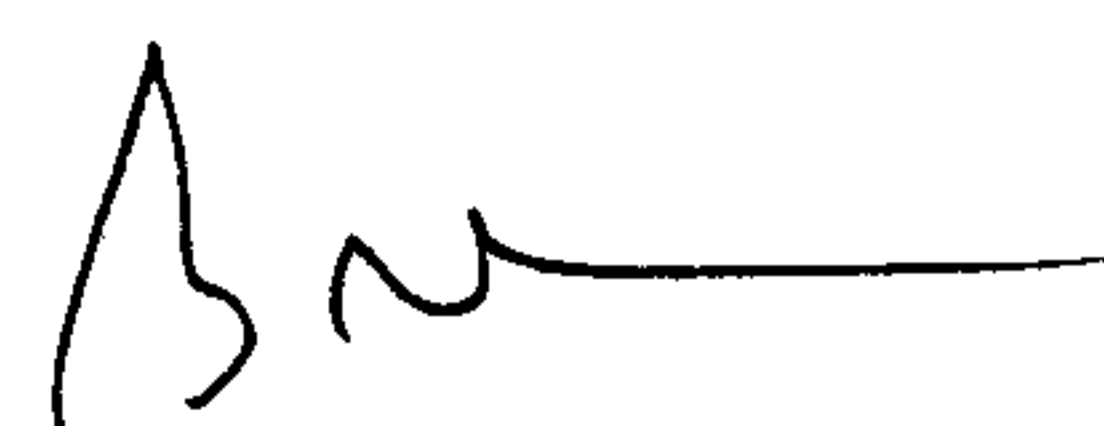
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the stipulated period of 30 days, it should be presumed that the authorities have no representation to make. The Petitioner Company in compliance of the aforesaid order served the notices to the Statutory Authorities. The Petitioner Amalgamating Company – 3 has also filed proof of service of notice vide affidavit dated 16th December, 2017.

8. In pursuance of the order dated 21st November, 2017, the meetings of the Equity Shareholder, Secured Creditors and Unsecured Creditors were duly conducted on 26th December, 2017 at 11th Floor, Safal Profitaire, Corporate Road, Opp: Auda Garden, Prahladnagar, Ahmedabad – 380015, Gujarat at 02.00 PM, 11:00 AM and 12:00 PM respectively. Mr. Ullas Shah, the Chairman of the meeting, has already filed the report of the Chairman vide an affidavit dated 30.12.2017. In the said meeting, the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Amalgamating Company – 3 had unanimously approved the scheme.

9. Pursuant to the notice, the Regional Director has filed a representation in respect of each of the Petitioner Companies. The Official Liquidator has also filed representation in respect of all the Amalgamating Companies. The Income Tax Department has also filed its representation.



10. The Petitioner Companies then filed the present petitions being CP (CAA.) No. 37 to 38 of 2018, before this Tribunal seeking sanction of the Composite Scheme of Arrangement.

11. This Tribunal by order dated 19th January, 2018, admitted the petitions and ordered that notice of hearing should be advertised in English daily "Indian Express", Ahmedabad edition and Gujarati daily "Sandesh", Ahmedabad edition, not less than 10 days before the date fixed for hearing, calling for their objections, if any, on or before the date of hearing. This Tribunal also directed to issue notice to Regional Director, Gujarat and the Income Tax Department informing the date of hearing i.e. 16th February, 2018.

12. Pursuant to the aforesaid order dated 19th January, 2018, passed by this Tribunal, the Petitioner Companies filed affidavit of service on 1st February, 2018 submitting the proof of service of publication and also proof of giving notice to the Regional Director, Registrar of Companies, Official Liquidator and the Income Tax Department.

13. Heard learned Advocate, Ms. Dharmishta Raval with Mr. Yuvraj Thakore, Advocate, for M/s Raval & Raval, Advocates, for the petitioner companies.

14. The first observation of the Regional Director is that the Petitioner company should undertake to comply with section 232 (3) (i) of the Companies Act. The Petitioner company undertakes

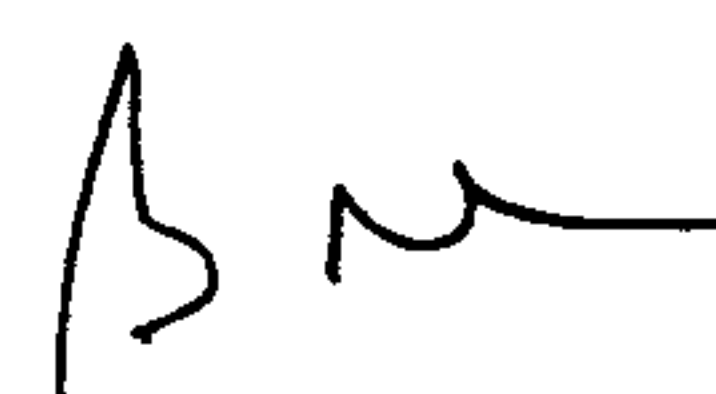
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the compliance of Section 232(3)(i) of the Companies Act 2013 and to pay the fees as envisaged under section 232(3)(i) of the Companies Act.

15. The Regional Director has further submitted that the present petition is scheme of demerger and not amalgamation and hence the authorized share capital of the demerged scheme cannot be transferred under the scheme. With reference to this observation it is submitted that the Regional Director has erred in appreciating the provisions of scheme as the present scheme is composite scheme of amalgamation and demerger and therefore under the concept of single window clearance the petitioner company is not liable to separately comply under provisions of section 61, 64 read with 117 of the Companies Act 2013 for increasing the authorized share capital.

16. The Regional Director has also observed that the Petitioner Companies may be directed to amend the scheme by including the relevant clause for the rationale of the scheme. It is submitted that it is not mandatory to include the clause for rationale of scheme. However, the petitioner company will comply with such directions as passed by this Hon'ble Tribunal and incorporate the rationale as stated in the Company Petition.

17. The Regional Director also submitted that the Petitioner Company rennumbers the clause 3.1 to 3.3 of Scheme as 2.1 to 2.3. In this connection it is submitted that the said Clauses will be renumbered after the Scheme is sanctioned.

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18. The Regional Director has also represented that the Petitioner Companies should comply with AS-14. Accordingly, the petitioner companies have undertaken to comply with AS-14.

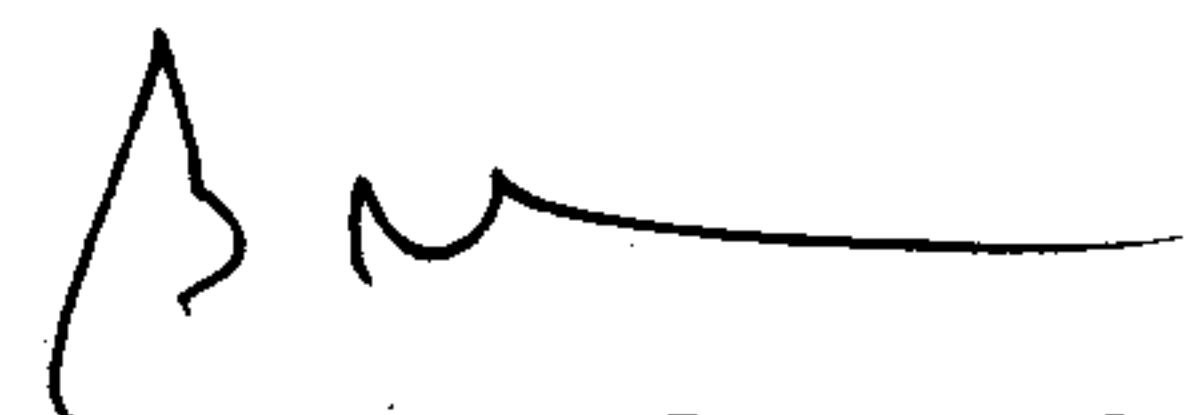
19. The Petitioner Company has also undertaken to comply with Section 2(19AA) of the Income Tax Act.

20. The Regional Director has also represented that the Petitioner Company be directed to pay necessary fees and charges for alteration of name. Accordingly the Petitioner Company undertakes for the payment of necessary fees on change of name.

21. The Petitioner Company has further submitted that provisions of FEMA and RBI guidelines are not applicable. However, the Petitioner Company undertakes to comply with FEMA and RBI guidelines whenever applicable.

22. The Regional Director has further submitted that in case of HN Safal Facilities Management Private Limited there are accumulated losses and reserves and, hence, the net worth is wiped off. It is specifically stated that the company has further infused monies and hence the concern of Regional Director is no longer valid.

23. Further, as per the report of the Registrar of Companies, Gujarat, there is no complaint/ representation against the



scheme of Amalgamation of the Petitioner Companies and there are no complaints against the Petitioner Companies.

24. The Regional Director further stated in his representation that the proposed Scheme is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

25. The Income Tax Department, in its representation, has stated that the Petitioner Amalgamating Companies are required to make payment to the Income Tax Department. In this connection it is submitted that on and after receiving approval of the Hon'ble Tribunal of the Scheme proposed by the Petitioner Companies, the rights assets and all the immovable property of the Petitioner Company shall vest in the Amalgamated Company. It is further submitted that on the approval of the Scheme the Amalgamated Company shall take over all the responsibilities and liabilities of payment of taxes by the Petitioner Companies. The Petitioner Companies also undertake to comply with all the applicable laws.

26. The Official Liquidator, in respect of Amalgamating Companies, in his representation has requested the Tribunal to direct the following:

- i. That the Petitioner Companies shall preserve books of accounts, papers and records and shall not dispose of without prior permission of Central Government as per the provision of section 239 of the Companies Act, 2013;

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- ii. That the petitioner companies shall ensure statutory compliance of all applicable laws and also on sanctioning of the present scheme, it shall not be absolved from any of its statutory liability, in any manner;
- iii. That the petitioner companies shall comply with Rule 17(2) of Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order if any, for confirmation of the scheme in form INC-28 with the Registrar of Companies having jurisdiction over the Petitioner companies involved

27. In response to the report of the Official Liquidator, the petitioner companies have, by way of an affidavit filed by the Authorised Representative of the Petitioner Companies, submitted to comply with the above directions of the Tribunal and accordingly, the representations made by the Official Liquidator stand satisfied.

28. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record and the affidavits filed, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme appears to be genuine and bona fide and in the interest of the shareholders and creditors.




29. In the result, these petitions are allowed. The Composite Scheme of Arrangement, which is at **Annexure – D** in respect of the each of the Petitions, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies, namely H Nyalchand Realty Private Limited, Vastupal Infrastructure Private Limited, Safal Realty Private Limited, Safal Infra-Developers Private Limited and HN Safal Facilities Management Private Limited and their Equity and Preference Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies and all concerned under the Scheme.

30. Fees of the Official Liquidator are quantified at Rs.10,000/- each in respect of the Petitioner Amalgamating Companies. The said fees shall be paid by the Petitioner Amalgamated Company 2.

31. Filing and issuance of drawn up orders are 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 certified copy of this order along with the Scheme immediately.

32. The Company Petitions are disposed of accordingly.


Ms. Manorama Kumar,
Member (J)


Bikki Raveendra Babu,
Member (J)

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