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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CP(CAA) No. 1/NCLT/AHM/2018  
CA(CAA) No. 162/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: Isar Builders & Developers Pvt. Ltd.  
Archana Overseas Pvt. Ltd.  
Demuric Holdings Pvt. Ltd.

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

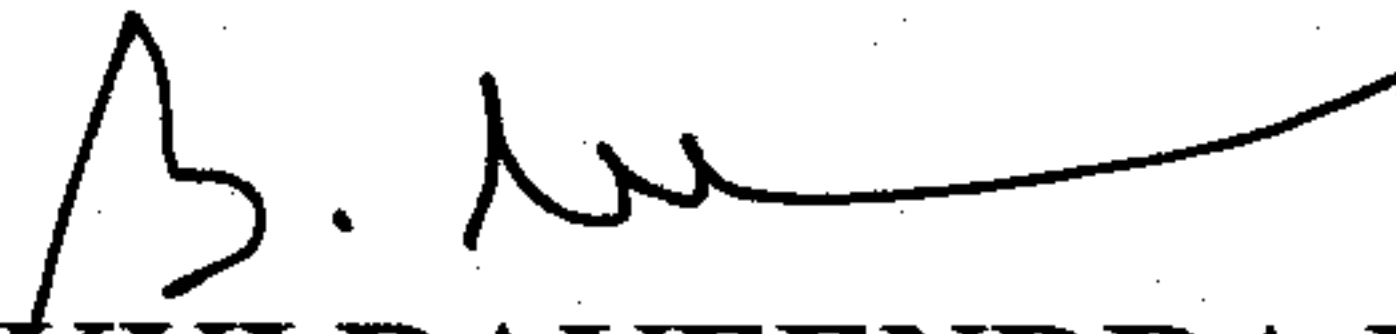
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar
2.				

**ORDER**

Learned Advocate Mrs. Swati Soparkar present for Petitioners.

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**

**CP(CAA) No. 1 of 2018**

**Connected with**

**CA(CAA) No. 162 of 2017**

In the matter of :-

1. Isar Builders & Developers  
Private Limited

A company incorporated under the  
Provisions of the Companies Act,  
1956 and having its registered office  
at Shed A2/1, GIDC, Vapi,  
Valsad – 396195,  
In the State of Gujarat.

Petitioner  
(First Transferor Company)

2. Archana Overseas Private Limited

A company incorporated under the  
Provisions of the Companies Act,  
1956 and having its registered office  
at Shed A2/1, GIDC, Vapi,  
Valsad – 396195,  
In the State of Gujarat.

Petitioner  
(Second Transferor Company)

3. Demuric Holdings Private Limited

A company incorporated under the  
Provisions of the Companies Act,  
1956 and having its registered office  
at Shed A2/1, GIDC, Vapi,  
Valsad – 396195,  
In the State of Gujarat.

Petitioner  
(Transferee Company)

Order delivered on 21<sup>st</sup> 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.

**ORDER**

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

1. This is an order for the joint petition filed by two Transferor  
companies and a Transferee Company under Section 230 and

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232 of the Companies Act, 2013 seeking sanction of this Tribunal to a Scheme of Amalgamation of Isar Builders & Developers Private Limited and Archana Overseas Private Limited with Demuric Holdings Private Limited.

2. It has been submitted that the Transferor Companies and the Transferee Company are part of the same group. The Board of Directors of both the Transferor Companies and Transferee Company are of the opinion that the proposed amalgamation of the Transferor Companies with the Transferee Company will be for the benefit of both the Transferor Companies and Transferee Company in the following manner:

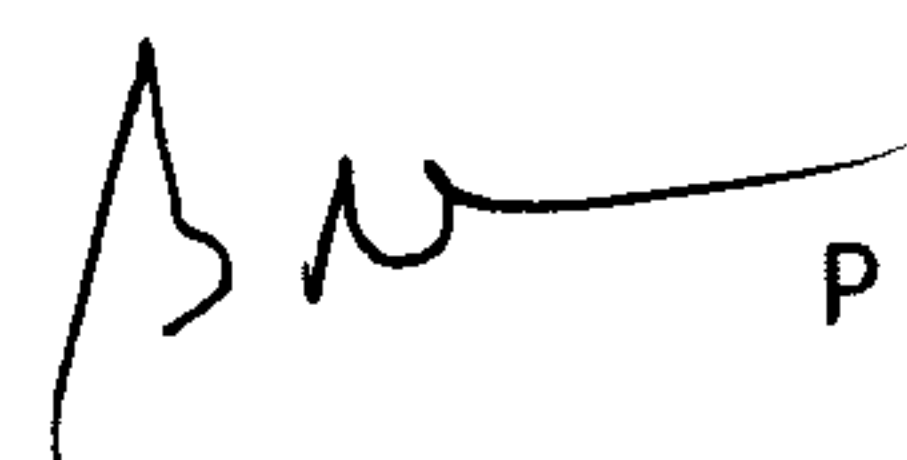
- Simplified corporate structure;
- The proposed amalgamation will reduce managerial overlaps, which are unnecessarily involved in running multiple entities;
- There shall be a reduction in regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs of both the companies;
- Enable cost saving and optimum utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency; and
- Streamlining of shareholding structure of the Transferee Company.

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In view of the aforesaid advantages, the Scheme of Amalgamation under the provisions of Section 230 to Section 232 and other relevant provisions of the Companies Act, 2013 was proposed and the report confirming the proposed Entitlement Ratio of Equity Shares, being just and reasonable was provided by M/s. Jawahar Thacker & Co., Chartered Accountants. The Board of Directors of the Petitioner Companies at the respective Board meetings held on 30<sup>th</sup> October 2017 approved the same. A copy of the same has been placed on record. In compliance with the proviso to subsection 7 of Section 230 of the Companies Act, 2013, a certificate of the Petitioner Transferee Company's Statutory Auditors dated 18<sup>th</sup> October 2017 was placed on record. The said certificate confirms that the accounting treatment as proposed under the Scheme of Amalgamation vide Clause 6 of the Scheme, is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

3. The Petitioner Companies had filed the proceedings before this Tribunal in form of joint application being C A (CAA) No. 162 of 2017. Vide the said application, the Petitioner Companies sought dispensation of meetings of the Equity Shareholders of the Applicant Companies. It was submitted that all the shareholders of all the Petitioner Companies had submitted the written consent letters on affidavit approving the proposed





Scheme. It was further submitted that there were no Secured Creditors and/or Unsecured Creditors of any of the Petitioner Companies. Hence, Vide the order dated 27<sup>th</sup> November 2017, passed in CA CAA No. 162 of 2017, the meetings of the shareholders of all the Companies were dispensed with. Since there were no Secured and/or Unsecured Creditors of any of the Petitioner Companies as certified by the Chartered Accountants, their meetings were held to be not necessary.

4. Vide the aforesaid order dated 27<sup>th</sup> November 2017, the Petitioner 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, (iii) concerned Income Tax Authorities; and (iv) Official Liquidator for the Transferor Companies only; along with Notice, Explanatory Statement and other requisite documents and disclosures. The notices were duly served on all the authorities on or before 7<sup>th</sup> December 2017. The affidavit dated 13<sup>th</sup> December 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 was filed with this Tribunal.

5. This petition was filed on 19<sup>th</sup> December 2017 and the same was admitted on 8<sup>th</sup> January 2018. The date of hearing was fixed as 29<sup>th</sup> January 2018. Directions were issued to publish Notice

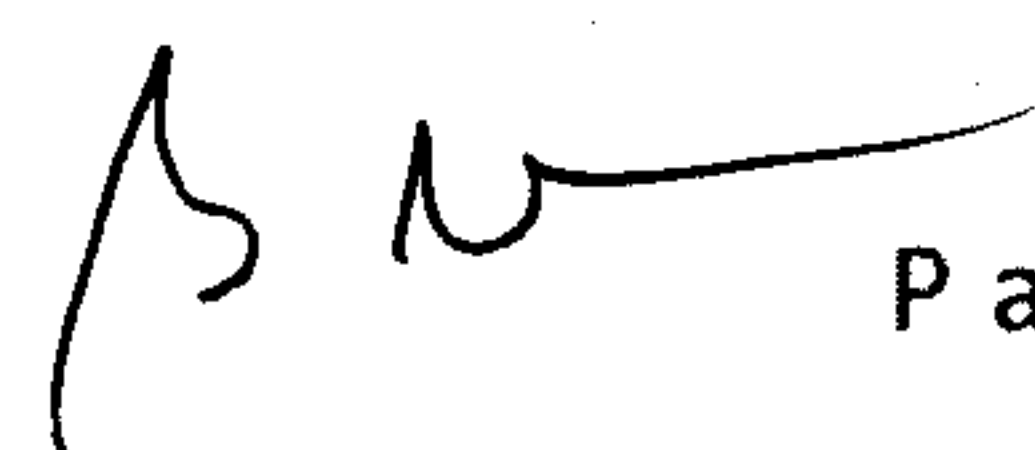


of Hearing of Petition in the newspapers viz. English daily, Indian Express and Gujarati daily, Sandesh Ahmedabad editions for all the companies, at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petition to the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) the concerned Income Tax authorities and (iv) Official Liquidator (in respect the Transferor Companies), at least before 10 days of the date of hearing of the petition.

Vide further order passed on 29<sup>th</sup> January 2018, notice was directed to be given to Reserve Bank of India to seek confirmation about compliance of applicable provisions of FEMA and RBI guidelines by the Petitioner Transferee Company, which was duly served on 31<sup>st</sup> January 2018.

6. Pursuant to the order dated 8<sup>th</sup> January 2018, notices were duly served by the petitioner companies on the statutory authorities on 16<sup>th</sup> /17<sup>th</sup> January 2018 and publications were duly made in the newspapers- English daily, Indian Express and Gujarati daily, Sandesh; Ahmedabad editions on 13<sup>th</sup> January 2018. An Affidavit of service and publication dated 24<sup>th</sup> January 2018 confirming the same has been placed on record.

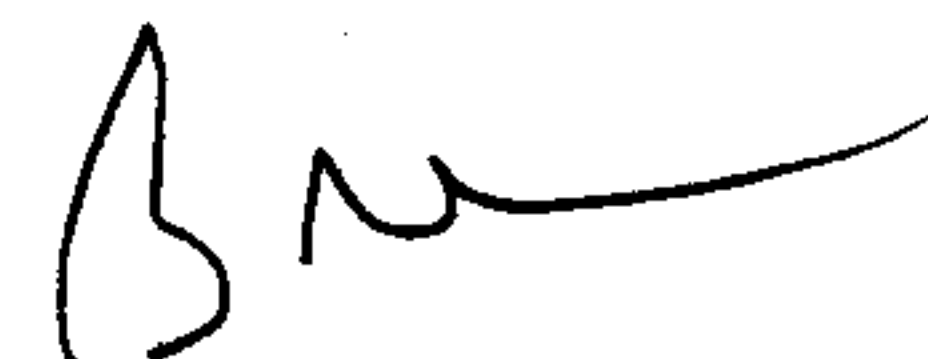
7. Heard Mrs. Swati Soparkar, learned advocate appearing for the petitioner companies. It has been submitted that in response



to the notice served at the first stage, the Regional director filed representation in form of the affidavit dated 19<sup>th</sup> January 2018. The Petitioner Companies have filed their response to the said representations in form of Additional Affidavit dated 24<sup>th</sup> January 2018 and further affidavit dated 1<sup>st</sup> February 2018.

(i) It has been submitted on behalf of the petitioner companies that Para 2 (a) to 2 (d) of the representation of the Regional Director deals with the factual aspect viz. Service of Notice for the proposed Scheme, nature of the proposed Scheme, proposed Exchange Ratio as recommended by the Chartered Accountants, Rationale for the Scheme and existing shareholding of the Transferee Company.

(ii) Para 2(e) refers to the proposed consolidation of the Authorised Share Capital of two Transferor Companies with that of the Transferee Company as envisaged under clause 15 of the Scheme. It is observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Transferee Company shall get the set off only for the amount of fees paid by the Transferor Companies. In view of the same, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorised Capital as on date and the actual amount of fees paid by the Transferor Companies at the relevant point of time. It has been clarified that the Transferee Company undertakes to pay such difference, if any applicable, for the amount of fees payable as





on date, on the proposed enhancement of Authorised Capital of Rs. 19,20,00,000/-.

(iii) Observation made vide para 2 (f) by the Regional Director refers to the Securities Premium Account reflected in the Balance Sheets as at 31<sup>st</sup> March 2017 for two petitioner companies. In this regard, it has been submitted that the balance sheets of the petitioner companies are regularly and duly audited by statutory auditors and the income tax returns are duly assessed by the Income Tax authorities. The petitioner companies have confirmed that there is no unaccounted money created through Securities Premium Account. It is further contended that the petitioner companies have paid applicable taxes (if any) and other legal dues on the Securities Premium in compliance with the applicable provisions of law.

(iv) Para 2 (g) of the affidavit refers to Clause 6 of the Scheme which deals with the Accounting Treatment. The said clause specifically confirms that the amalgamation shall be accounted for in accordance with 'Pooling of Interest Method' of accounting as per Indian Accounting Standard (IND AS) 103 (Business Combination) prescribed under Section 133 of the Companies Act, 2013, which is applicable in the present case as it is a common control business combination. Notwithstanding the contention that it implies that all the requirements of the said standard shall be complied with, it has been further undertaken by the petitioner Transferee Company that any excess of asset over liabilities shall be

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credited to 'Amalgamation Reserve Account' and the shortfall if any shall be debited to 'Goodwill Account'. Further, the Petitioner Companies have also undertaken that the aforesaid reserve so created shall not be available for distribution of dividend.

(v) Next observation made vide Para 2 (h) of the said affidavit refers to the losses suffered by the Transferee Company and issue of corporate gift in the financial year 2009-10. The petitioner companies have already provided the factual details as well as explanation for the same to the Regional Director vide its letter submitted on 18<sup>th</sup> January 2018 and a copy of the same is placed on record. In this regard it has been submitted that any actions of the Transferee Company are not in contravention of any provisions of law. The facts have been disclosed clearly in the Directors' reports for the relevant year.

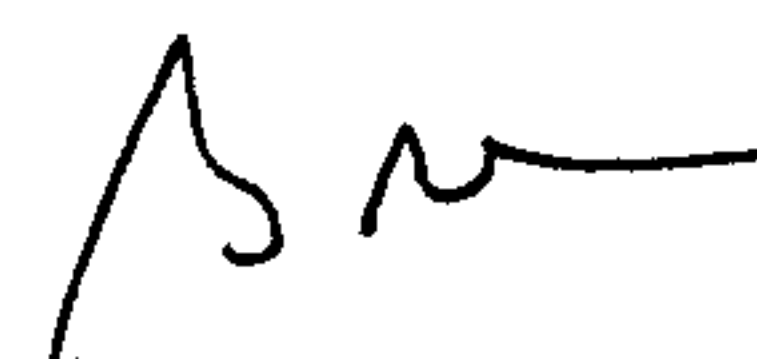
(vi) Para (i) of the said affidavit refers to the fact of shares of the Transferee Company being held by foreign shareholders. It has been clarified that the Transferee Company has complied with the applicable provisions of FEMA and RBI guidelines. In response to the notice served upon the Reserve Bank of India for seeking the confirmation, the reply dated 15<sup>th</sup> February 2018 is received from the said authority. However, there is no specific confirmation with regard to compliance or contravention of the applicable laws. It has been submitted on behalf of the Company that no action has been so far taken by RBI for any contravention. Further, this being a Transferee



Company is not getting dissolved as a result of amalgamation. It shall continue to exist and shall be liable for any action taken for such contravention, if any, even in future.


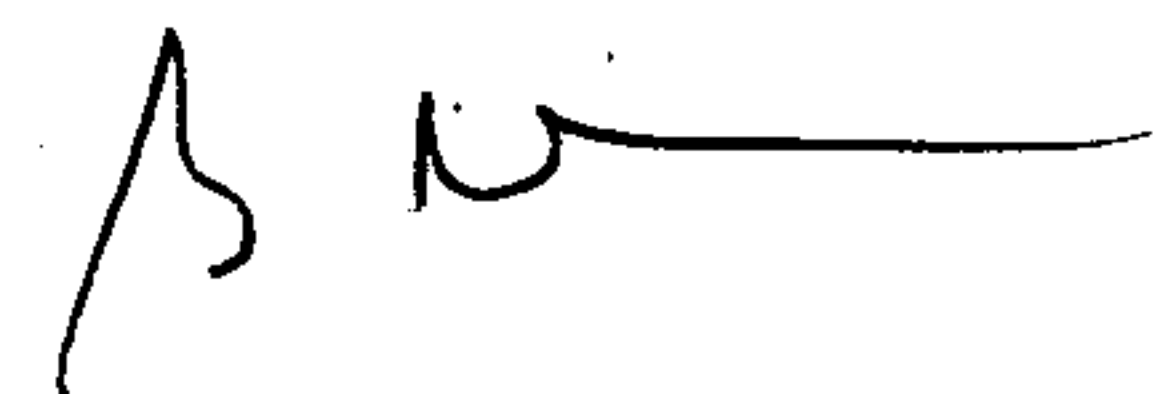
(vii) It is further pointed out that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director has further confirmed that he has no other observation/submission and that the proposed Scheme of Amalgamation is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

8. In response to the Notice of the petition served upon the Office of the Official Liquidator for the Transferor companies, the Official Liquidator filed with the Hon'ble Tribunal separate representations for each Transferor Company dated 9<sup>th</sup> January 2018. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the affairs of the Transferor Companies have been conducted within their respective object clause and the same has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor companies may be dissolved without following the process of winding up. However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records of the Transferor Companies and not to dispose of the same without prior permission of the Central Govt. as per the provisions of

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Section 239 of the Companies Act, 2013. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Companies and not to dispose of the same without prior permission of the Central Govt. as required under section 239 of the Companies Act, 2013. It is hereby further directed that even after the scheme is sanctioned, the Transferor companies shall comply with all the applicable provisions of law and shall not be absolved from any of their statutory liability.

9. 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 Additional affidavit dated 24<sup>th</sup> January 2018, the petitioner companies have made their submissions based on their own records. It has been contended that as on 30<sup>th</sup> September 2017, there are no outstanding demands of income tax in case of the Transferor Companies. In case of the Transferee Company, there are some outstanding liabilities of Income Tax, as reflected in its Balance Sheet. However, they being disputed demands, litigation for the same are pending before the concerned Appellate Authorities. It has been undertaken that as and when the said demands are finally crystallized, the Transferee Company, shall meet with the said liabilities. The Transferee Company has also undertaken to abide by all the applicable provisions of the Income Tax Act.

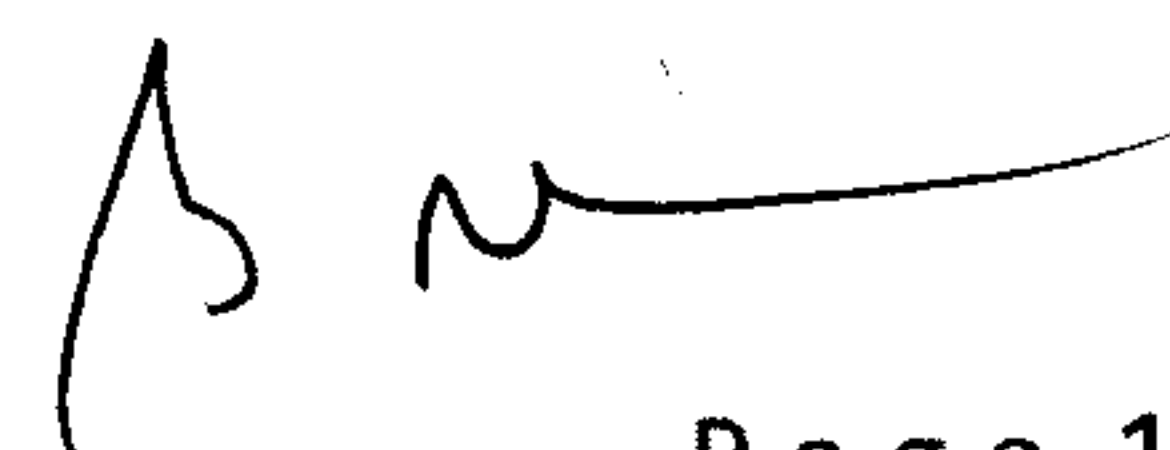
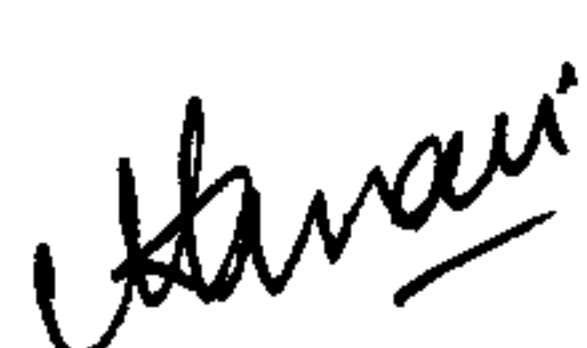




10. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of Chartered Accountant dated 18<sup>th</sup> October 2017, confirming that the accounting treatment envisaged under the said scheme of Amalgamation in the books of the Transferee Company is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013.

11. 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 observations made by the Regional Director stand satisfied by the submissions made by the petitioner companies. The proposed Scheme of Amalgamation 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.

12. As a result, this petition is allowed. The Scheme which is at Annexure- 'G' to the petition is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders and all concerned under the scheme. It is also declared that the Transferor Companies viz.



Isar Builders & Developers Private Limited and Archana Overseas Private Limited shall stand dissolved without winding up.

13. The cost to be paid to the Official Liquidator is quantified at Rs. 10,000/-each in respect of the Transferor Companies only. The said fees to the Official Liquidator shall be paid by the Transferee Company.


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 Scheme immediately.

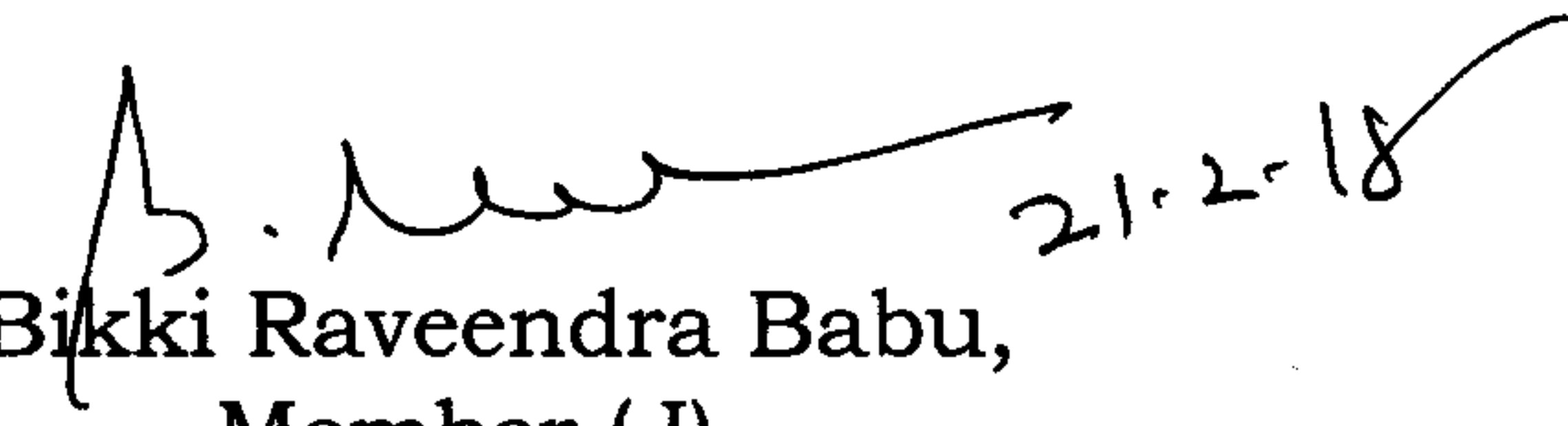
15. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Transferor companies as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose 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. This Company Petition is disposed of accordingly.

  
Ms. Manorama Kumar,  
Member (J)

  
Bikki Raveendra Babu,  
Member (J)

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