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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**TP No. 59/NCLT/AHM/2017 (New)
With Gujarat High Court CP no. 486 and CA No. 465/2016**


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 13.06.2017**

Name of the Company: HMS Construction 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.	VAIBHAVI PARIKH	ADVOCATE	PETITIONER	
2.				

ORDER

Learned Advocate Ms. Vaibhavi Parikh present for Petitioner.

Common Order Pronounced in open Court. Vide separate sheet


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 13th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

T.P. No. 59/NCLT/AHM/2017

With

T.P. No. 60/NCLT/AHM/2017

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
(Date: 13th day of June, 2017)**

In the matter of :

1. HMS Construction Private Limited
A Company registered under the
Companies Act, 1956 and having
its Registered Office at Apollo Complex,
Opp. Jain Temple, Highway,
Mehsana - 384 002, Gujarat. ... Petitioner of T. P. No. 59/2017
(Transferor Company)

AND

2. M B Stone Private Limited
A Company registered under the
Companies Act, 1956 and having
its Registered Office at :
205, 2nd Floor, Shivam Complex,
Opp. Hetarth Party Plot,
Science City Road,
Ahmedabad - 380 061,
State of Gujarat. ... Petitioner of T. P. No. 60/2017
(Transferee Company)

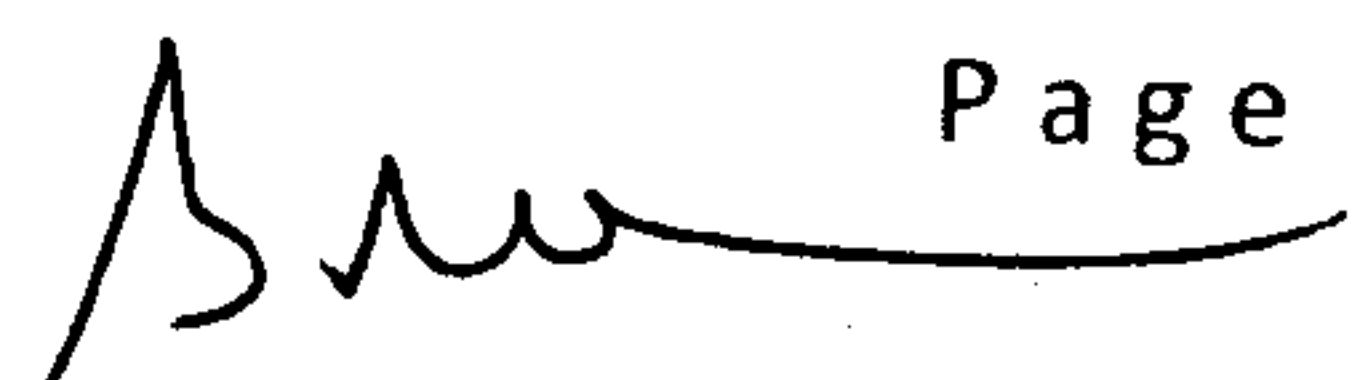
Appearance: -

Ms. Vaibhavi Parikh, Advocate, for the petitioner companies.
Mr. Pritesh L. Parikh, Advocate, for the Official Liquidator.
Mr. Lalit M. Patel, Advocate, for the Objector.

COMMON FINAL ORDER

(Date: 13.06.2017)

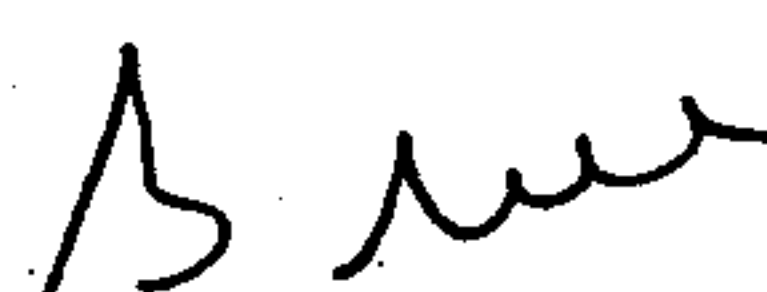
1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Amalgamation of HMS Construction Private Limited (Transferor Company) with M B Stone Private Limited (Transferee Company) ('Scheme' for short).
2. The Petitioner of T.P. No. 59 of 2017, i.e. HMS Construction Private Limited, had filed an application in the



Hon'ble High Court of Gujarat, being Company Application No. 465 of 2016, seeking dispensation of the meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company. The Hon'ble High Court, vide order dated 20th October, 2016 dispensed with the convening and holding of the meeting of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company in view of the consent letters given by the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company.

3. The Petitioner of T.P. No. 60 of 2017, i.e. M B Stone Private Limited, had filed an application in the Hon'ble High Court of Gujarat, being Company Application No. 464 of 2016, seeking dispensation of the meeting of the Equity Shareholders of the said Company. The Hon'ble High Court, vide order dated 20th October, 2016 dispensed with the convening and holding of the meeting of the Equity Shareholders of the Petitioner Company in view of the consent letters given by the Equity Shareholders of the Petitioner Company. The Hon'ble High Court vide its aforesaid order dated 20th October, 2016 also ordered that as the rights and interests of the Creditors of the Petitioner Transferee Company are not likely to be prejudicially affected, the approval of the Creditors of the Transferee Company is not necessary and was thus dispensed with.

4. The Petitioners thereafter filed Company Petition Nos. 485 and 486 of 2016 in the Hon'ble High Court of Gujarat seeking sanction of the Scheme. The Hon'ble High Court vide its orders dated 15th November, 2016 admitted the aforesaid Company Petitions and directed the issuance of notice to the Regional Director in both the aforesaid Company Petitions and the Official Liquidator in Company Petition No. 486 of 2016. The Hon'ble Court also directed publication of notice of hearing of the petitions in the English Daily Newspaper "Indian Express" and Gujarati Daily Newspaper "Jai Hind", both having circulation in Mehsana,



for the Transferor Company and Ahmedabad for the Transferee Company. The Hon'ble High Court also dispensed with publication of the notice in the Government Gazette.

5. Pursuant to the order dated 15th November, 2016 passed by the Hon'ble High Court, the petitioner companies published the hearing of the petitions in the English Daily Newspaper "Indian Express" and Gujarati Daily Newspaper "Jai Hind" both having circulation, in Mehsana and Ahmedabad, on 26th November, 2016. The notices in respect of hearing of both the Company Petitions were served upon the Regional Director and notice of hearing in respect of Company Petition No. 486 of 2016 was served upon the Official Liquidator on 2nd December, 2016 and affidavits to that effect were also filed on behalf of the Petitioner Companies.

6. Subsequently, the Hon'ble High Court, in view of Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016 vide orders dated 10th March, 2017, transferred the aforesaid Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos. 59 and 60 of 2017. Thereafter, this Tribunal, vide orders dated 10th April, 2017, directed the Petitioner Companies to publish notice in the newspapers in which already publication had been made informing the date of hearing. The Petitioner Companies were also directed to serve notice to the following statutory authorities: -

- a. The Central Government through the Regional Director, Gujarat;
- b. The concerned Income Tax Authorities;
- c. The Registrar of Companies, Gujarat.

The Petitioner Company in T.P. No. 59 of 2017 was also directed to serve notice on the Official Liquidator. Accordingly, the Petitioner Companies published notice of hearing of T.P. Nos. 59 and 60 of 2017 in English Daily, "Indian Express" and Gujarati Daily, "Jai Hind" both having circulation in Mehsana and



Ahmedabad on 21st April, 2017. Notices of hearing of the petitions were also served upon the statutory authorities, namely, (i) the Central Government through the Regional Director, (ii) the concerned Income Tax Authority, (iii) the Registrar of Companies, Gujarat, Ahmedabad, (iv) the Official Liquidator and affidavit of service and publication dated 3rd May, 2017 has been filed by the Director of the Petitioner Companies.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 4th May, 2017. The Official Liquidator filed a representation dated 19th May, 2017. However, no representation has been received from the Income Tax Authorities. Similarly, pursuant to the publication of notice of hearing of the petitions in the newspapers, no objection to the Scheme has been received from the public at large. Likewise, pursuant to the notices issued to the equity shareholders and creditors in case of the Transferor Company, no shareholder and/or creditor has raised any objection to the proposed scheme in the case of the Transferor Company. Pursuant to the notices issued to the equity shareholders and creditors in case of Transferee Company, no shareholder and/or creditor has raised any objection to the proposed scheme in the Transferee Company except one Secured Creditor viz. Kotak Mahindra Bank Limited.

8. In response to the common representation filed by the Regional Director, the Petitioner Companies have filed reply affidavit dated 25th May, 2017 in respective petitions. The Petitioner Transferor Company has filed its reply affidavit dated 25th May, 2017 to the representation filed by the Official Liquidator.

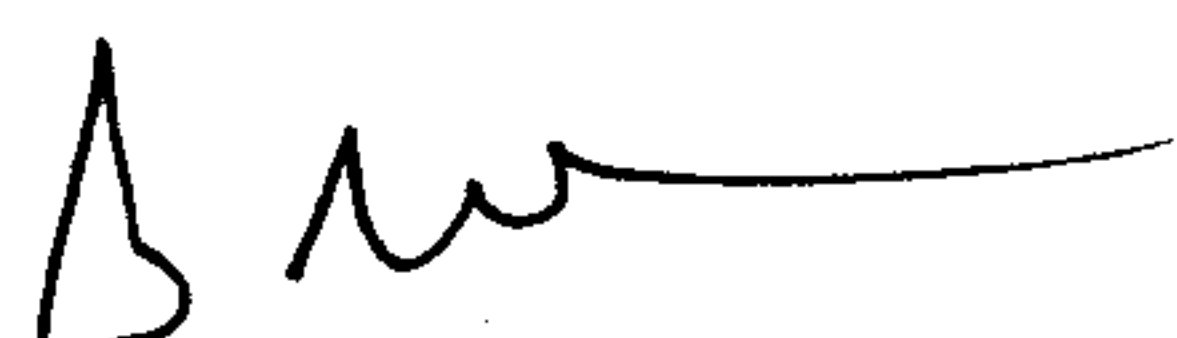
9. Heard learned Advocate, Ms. Vaibhavi Parikh, for the Petitioner Companies and learned Advocate, Mr. Pritesh Parikh, for the Official Liquidator.

10. In Paragraph No. 2(d) of the common representation filed by the Regional Director, the Regional Director has stated that as per the report of the Registrar of Companies dated 27th December, 2016 there are no complaints against the Petitioner Companies including any complaint/representation against the Scheme of Arrangement of the Petitioner Companies is received by the office of the Registrar of Companies.

11. It is also stated by the Regional Director in Paragraph No. 2(e) of the common representation filed by the Regional Director that the proposed Scheme is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

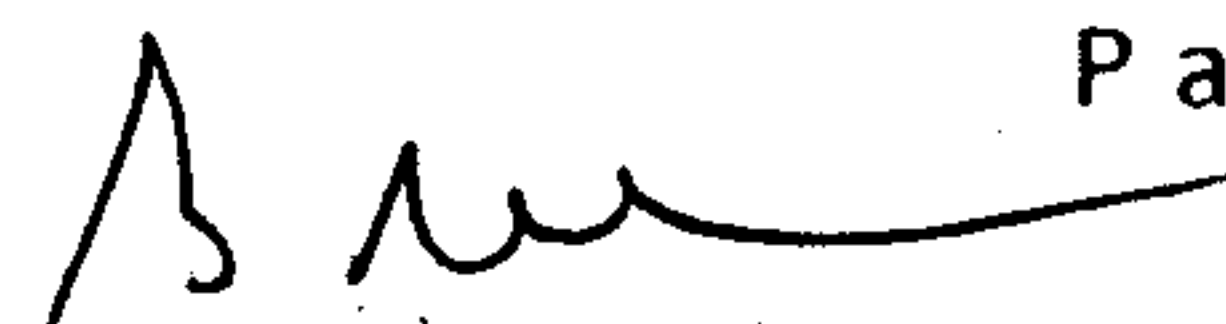
12. It is stated by the Petitioners in their respective affidavits dated 25th May, 2017 that notice of petition was served on the Income Tax Department on 20th April, 2017. Pursuant to the service of notice, neither the Petitioner Companies nor their Advocate has received any objection from the Income Tax Authorities for the respective Petitioner Companies. It has been stated by the Director on behalf of the Petitioner Companies in affidavit dated 25th May, 2017 filed in respective petitions that the Petitioner Companies undertake to comply with the Income Tax Act, 1961 and Income Tax Rules, 1962.

13. In response to the notice to the Official Liquidator in Company Petition No. 486 of 2016 (T.P. No. 59 of 2017), the Official Liquidator filed his representation dated 19th May, 2017. On perusal of the said report, the Official Liquidator at Paragraphs 15 and 19 has observed that the Scheme should be applicable to "all the employees" instead of "all permanent employees" and had requested the Tribunal to direct the Petitioner Companies to amend the Clause 12.1 of the Scheme. In response to the said observation made by the Official Liquidator in his report, in Paragraph No. 7(a) of the affidavit dated 25th May, 2017 filed by



the Petitioner Companies, it is stated that the employees other than permanent employees that are employed by the Transferor Company are as per the contractual obligations and, therefore, cannot be absorbed by the Transferee Company as the validity of the contract is for a specific period. In any case, the employees other than the permanent employees are automatically covered under the scheme as all the contracts entered into by the Transferor Company which are valid as on the effective date shall be binding on the Transferee Company and, therefore, this becomes an automatic absorption of all the employees other than permanent employees by the Transferee Company. The Clauses 4.11(b) and 10 of the Scheme clearly envisages that all the agreement/contracts shall continue in full force and effect in favour of the Transferee Company and therefore, it is not required to amend Clause 12.1 of the Scheme. It is further submitted that the Petitioner Transferee Company undertakes to absorb all the employees of the Transferor Company upon scheme coming into effect.

14. The Official Liquidator at Paragraph Nos. 16 and 20 has observed that the pursuant to the scheme becoming effective the authorized share capital of the Petitioner Transferee Company shall increase and requested the Tribunal to direct the Petitioner Transferee Company to increase its authorized share capital as per provision of Section 61(1) of the Companies Act, 2013 by filing E-form along with requisite amount of fees for increased authorized share capital before the Registrar of Companies, Gujarat for implementation of scheme. In response to the said observation made by the Official Liquidator in his report, in Paragraph No. 7(b) of the affidavit dated 25th May, 2017 filed by the Petitioner Companies, it is undertaken to comply with the requirements of the provisions of 61 (1) of the Companies Act, 2013 and file necessary forms and pay applicable fees with Registrar of Companies, Gujarat for increase in the authorized share capital pursuant to the scheme coming into effect.



15. The Official Liquidator at Paragraph No. 18 has submitted that the affairs of the Petitioner Transferor Company have not been conducted in a manner prejudicial to the interest of its members or to the public interest.

16. With regard to the observation made by the Official Liquidator at Paragraph No. 21 of the report, in Paragraph No. 7(d) of the affidavit dated 25th May, 2017, it is stated that the Petitioner Transferor Company undertakes to preserve its books of accounts, papers and records and shall not dispose of without the prior permission of the Central Government as per the provision of Section 239 of the Companies Act, 2013.

17. In Paragraph No. 22 of the report, the Official Liquidator has requested the Tribunal to direct the Petitioner Company to ensure statutory compliance of all applicable laws and also on sanctioning of the Scheme, the Petitioner Company be not absolved from any of its statutory liability in any manner. In reply given in Paragraph No. 7(e) of the Affidavit dated 25th May, 2017, the Petitioner Transferor Company has stated that the Petitioner Transferor Company ensured statutory compliance of all applicable laws and that the Petitioner Transferor Company shall not be absolved from any of its statutory liability. However, it is observed that upon sanctioning of the Scheme, the Petitioner Transferor Company shall not be absolved from any of its statutory liability, in any manner.

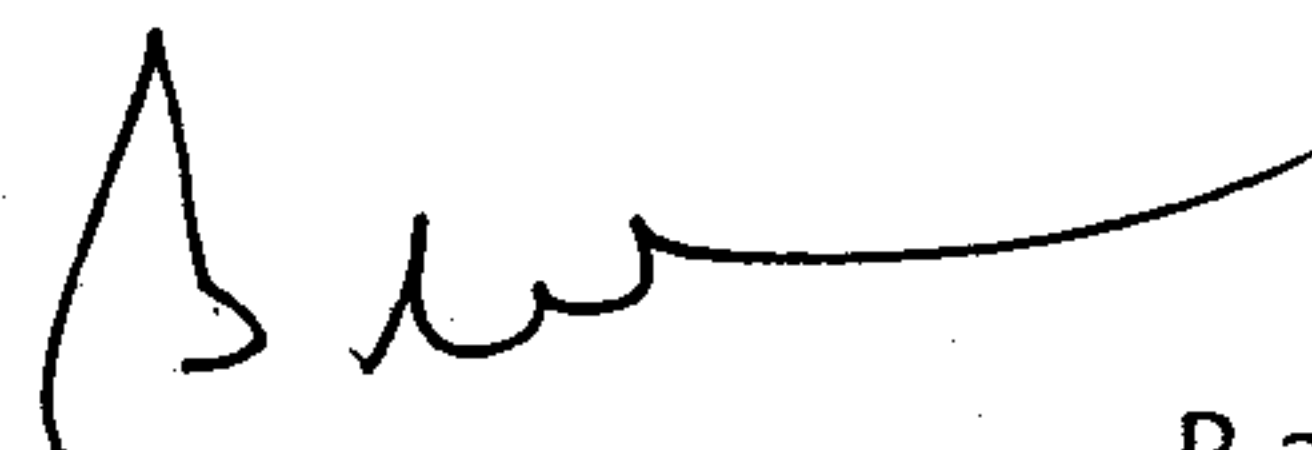
18. In respect of the observation made at Paragraph No. 23 of the report, it is stated at Paragraph No. 7(f) of the Affidavit dated 25th May, 2017 that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. In this regard, the Petitioner Companies in their respective affidavits have produced certificates from the auditors at 'Annexure I' certifying

that the proposed accounting treatment contained in the Scheme is in compliance with the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013.

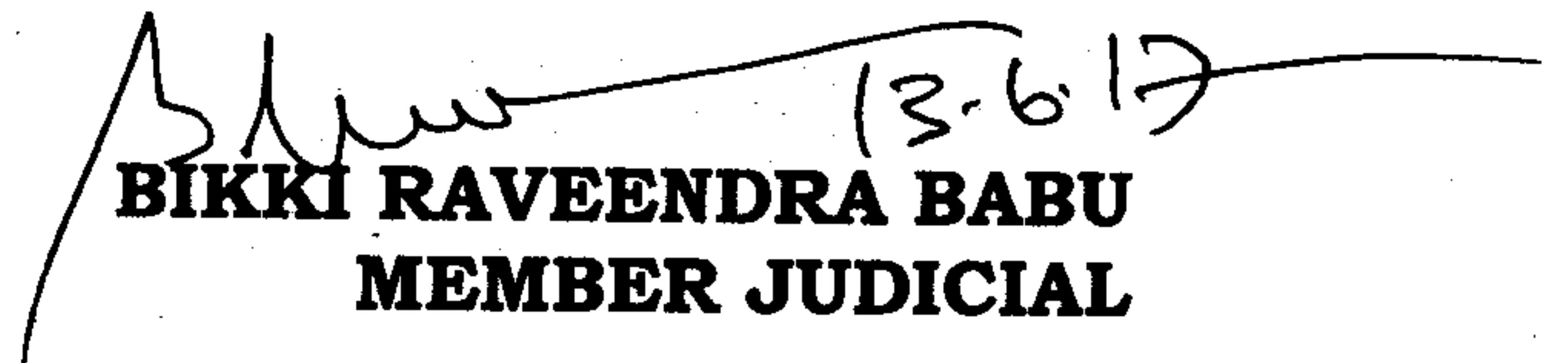
19. The Official Liquidator requested the Tribunal to direct the Petitioner Transferor Company to pay cost of Rs. 10,000/- to the office of the Official Liquidator. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers.

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

20. Pursuant to the service of notice of petition upon the Secured Creditors by the Transferee Company, one Secured Creditor namely Kotak Mahindra Bank Limited filed its objection vide affidavit dated 20th May, 2017, which was placed on record at the time of hearing of the petitions on 22nd May, 2015. This Tribunal vide order dated 22nd May, 2017 directed the Transferee Company to state the total value of Creditors, both Secured and Unsecured, separately and the Percentage of Outstanding Debt Value of Kotak Mahindra Bank Limited along with a Certificate from Chartered Accountant to consider the objection raised. The Transferee Company has vide an affidavit dated 29th May, 2017 placed on record a Certificate of Chartered Accountant from which it is reflected that the Outstanding Debt Value of the objector Kotak Mahindra Bank Limited is 3.31% which is not in compliance with the proviso to sub Section (4) of Section 230 of the Companies Act, 2013. The objector Kotak Mahindra Bank Limited has vide an affidavit dated 30th May, 2017 withdrawn its objection by placing a letter dated 27th May, 2017 on record along with the affidavit.



21. 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 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.
22. In the result, these Petitions are allowed. The Scheme of Amalgamation which is at Annexure – C to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, HMS Construction Private Limited and M B Stone Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Company, namely, HMS Construction Private Limited, shall stand dissolved without winding up.
23. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of T.P. No. 59 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.
24. 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.
25. These Company Petitions are disposed of accordingly.

 13.6.17
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 13th day of June, 2017.

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