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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P.(CAA) No. 9/NCLT/AHM/2017
with Gujarat High Court CA no. 472/2016

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 27.07.2017**

Name of the Company: Icenet 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.

2.

ORDER

None present for petitioner.

Common order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 27th day of July, 2017.

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

CP(CAA) No.9 of 2017

With

CP(CAA) No.10 of 2017

In the matter of :-

1. Icenet Private Limited

A Company registered under the
Companies Act, 1956 and having its
Registered Office at 905,
Silicon Tower, Off. C.G. Road,
Ahmedabad – 380 009. ...

Petitioner of CP(CAA) No.9 of 2017

(Transferee Company)

AND

1. Magic Engineers Private Limited

A Company registered under the
Companies Act, 1956 and having its
Registered Office at 15, Arjav Society,
Off. Fun Republic, Satellite Road,
Ahmedabad – 380 009. ...

Petitioner of CP(CAA) No.10 of 2017

(Transferor Company)

Order delivered on 27th July, 2017

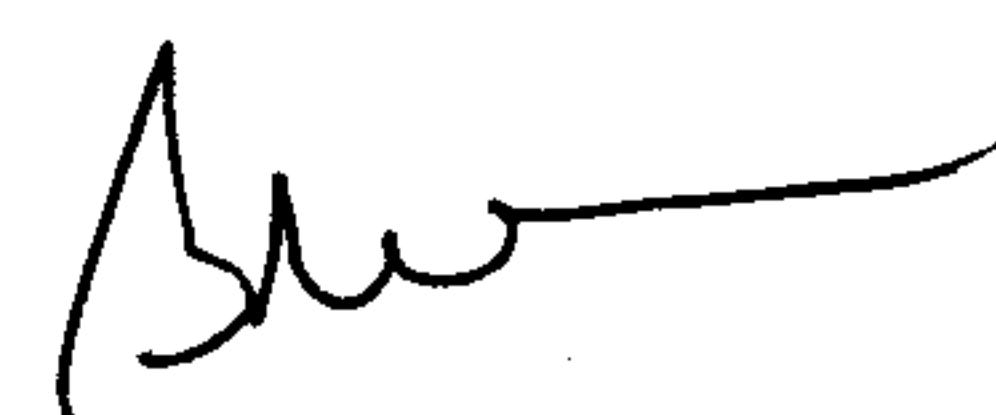
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Tanvish Bhatt, Advocate for M/s Wadia Ghandy & Co. (Ahmedabad),
Advocates, for the Petitioners.

COMMON FINAL ORDER

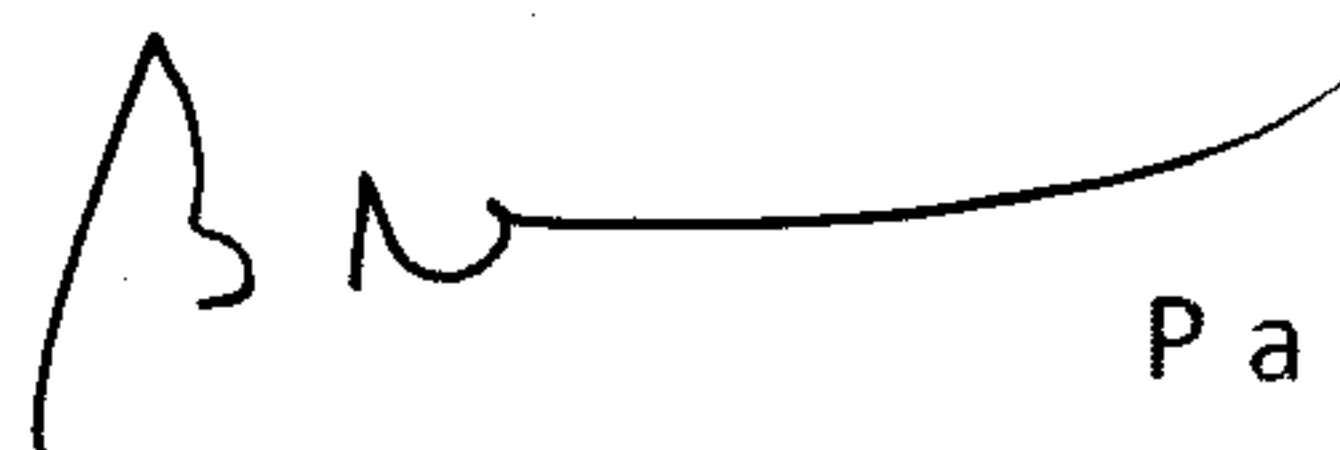
1. The Petitioner Companies have filed these Petitions under Sections 230 to 232 of the Companies Act, 2013 seeking sanction of a Scheme of Arrangement in the nature of Amalgamation of Magic Engineers Private Limited with Icenet Private Limited and their respective shareholders and creditors ("Scheme for short").



2. The Petitioner of C.P. (CAA 9/NCLT/AHM/2017) i.e. Icenet Private Limited is the Transferee Company whereas the Petitioner of C.P.(CAA 10/NCLT/AHM/2017) i.e. Magic Engineers Private Limited is the Transferor Company. Icenet Private Limited shall hereinafter be referred to as the Transferee Company and Magic Engineers Private Limited shall hereinafter be referred to as the Transferor Company.
3. The respective petitions by the Petitioner Companies set out the details about their share capital, the objects with which the companies came to be incorporated and other relevant facts. Since the two petitions are in relation to the common Scheme, they were heard together and are disposed of by this common order.
4. The Transferor Company was incorporated on 15th February, 2007 and is *inter alia* engaged in the business of providing internet services, consultation services for information technology industry and also undertakes activities of providing designs and solutions in all fields of engineering. The Transferee Company was incorporated on 19th May, 1998 and it is also engaged in the business of providing internet services including services relating to network design and deployment, software development and tech support services.



5. The Transferor Company had filed Company Application No. 473 of 2016 before the Hon'ble Gujarat High Court seeking dispensation of the meetings of shareholders and the unsecured creditors of the company in view of due consents received from them. There were no secured creditors of the Transferor Company. The Hon'ble Gujarat High Court took note of the aforesaid facts and by Order dated 7th November, 2016, dispensed with the requirement of holding the meetings of the shareholders and unsecured creditors of the Company.
6. The Transferee Company had filed Company Application No. 472 of 2016 before the Hon'ble Gujarat High Court seeking directions for convening separate meetings of the shareholders and unsecured creditors of the Company for the purpose of considering and, if thought fit, approving with or without modification, the Scheme of Amalgamation. The Transferee Company did not have any secured creditors. The Hon'ble Gujarat High Court took note of the aforesaid facts and by Order dated 7th November, 2016, issued appropriate directions for convening the meeting of shareholders and unsecured creditors of the Company.
7. The aforesaid meetings of the shareholders and unsecured creditors of the Transferee Company were duly convened and separate reports accompanied by Affidavit of the Chairman appointed for the said meetings were duly filed.



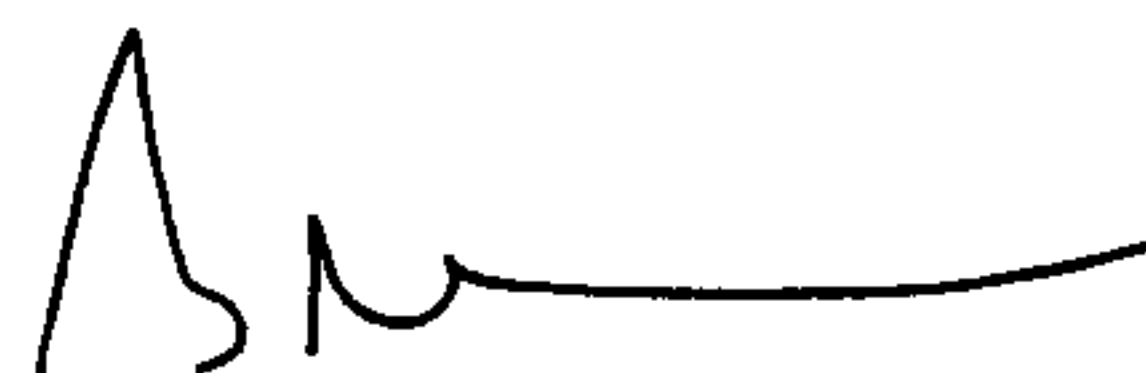
8. Subsequently, upon Sections 230-232 of the Companies Act, 2013 being notified, these substantive petitions were filed before this Tribunal, placing the Scheme of Amalgamation for consideration and sanction of this Tribunal.

9. This Tribunal, vide Orders dated 17th March, 2017, directed the Petitioner Companies to publish notice of the hearing of these petitions in daily newspapers 'Indian Express' and 'Sandesh', both Ahmedabad editions. The Petitioner Companies were also directed to serve notice of the petitions to the following authorities: -

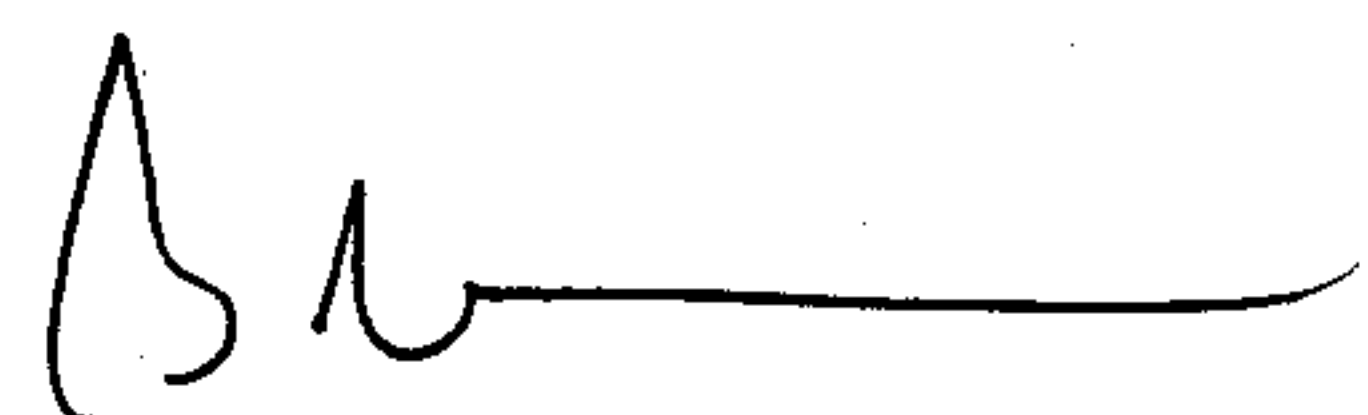
- a. The Central Government through Regional Director, Gujarat Western Region;
- b. Registrar of Companies, Gujarat;
- c. The concerned Income Tax Authorities.

The Transferor Company was also directed to serve the notice to the Official Liquidator.

10. The public notices, as directed by this Tribunal, were duly advertised on 6th April, 2017 in "Indian Express", English daily and "Sandesh", Gujarati daily, both Ahmedabad editions. No one has come forward with any objection to the said petitions even after the publication.

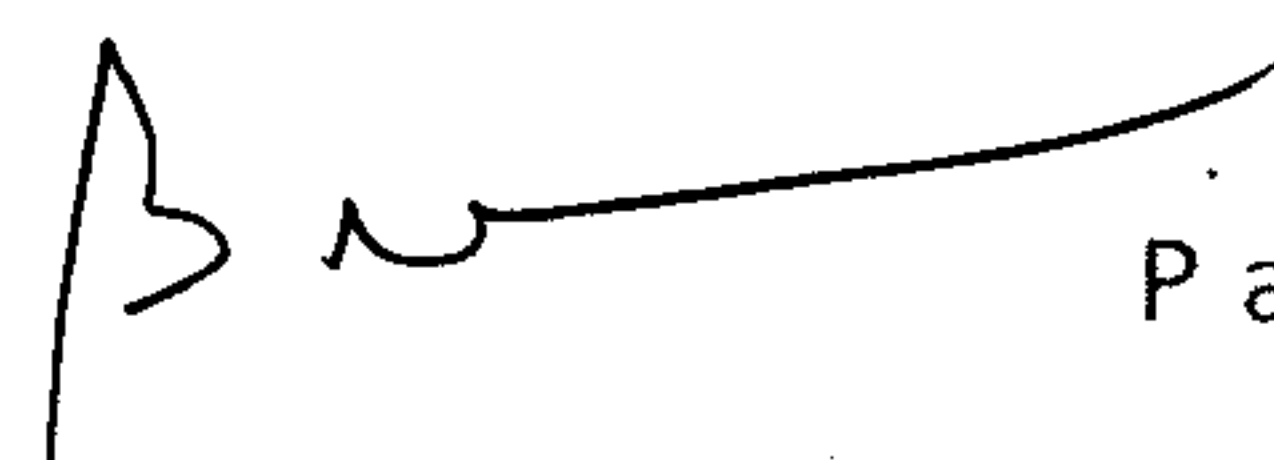


11. The notice of the petitions was duly served upon the aforementioned statutory authorities. In response, a common representation dated 22nd June, 2017 came to be filed by Mr. A.K. Chaturvedi, Regional Director. The Official Liquidator also filed its response on 26th April, 2017. No representation has been received from the Income Tax Authorities.
12. Heard learned Advocate, Mr. Tanvish Bhatt for M/s Wadia Ghandy & Co., Advocates for the Petitioner Companies.
13. The Regional Director in Paragraph 2(d) of the Common Affidavit has observed that capital clause of the Transferee Company shall be amended through the Scheme under the accepted principle of Single Window Clearance as per Clause 7.1 of the Scheme. Further, the Regional Director, in Paragraph 2(f) of the Common Affidavit has stated that as per the report of the Registrar of Companies dated 12th April, 2017 and 22nd June, 2017, there are no complaints against the Petitioner Companies including any complaint/ representation against the Scheme of Amalgamation. The Regional Director also observes in Paragraph 2(g) of the Common Affidavit that the proposed Scheme of Amalgamation is not prejudicial to the interests of shareholders of the Petitioner Companies and the public at large.



14. Therefore, it appears that the Regional Director does not have any objection to the sanction of the present Scheme of Amalgamation.

15. The Official Liquidator in his representation dated 26th April, 2017 filed in C.P.(CAA)10/NCLT/AHM/2017 has observed in Paragraph 12 that the Petitioner Company may be dissolved without following the process of winding up in terms of sub-section 3(d) of Section 232 of Companies Act, 2013. However, in paragraph 13, the Official Liquidator has observed that the petitioner company may be directed to preserve its books of accounts, papers and records and shall not dispose of the same without prior permission of the Central Government, as per the provisions of Section 239 of the Companies Act, 2013. In paragraph 14 of the representation, the Official Liquidator has observed that, as per the certificate dated 3.1.2017, issued by the Auditors, the accounting treatment as proposed in the Scheme is in conformity with the accounting standards prescribed under the provisions of Section 133 of the Companies Act, 2013. In paragraph 18 of the representation, the Official Liquidator has requested the Tribunal to direct the petitioner company to ensure statutory compliance of all applicable laws and to observe that upon sanctioning of the Scheme, the petitioner company shall not be absolved from any of its statutory liabilities, in any manner. The Official Liquidator has also requested for a direction to the petitioner company for

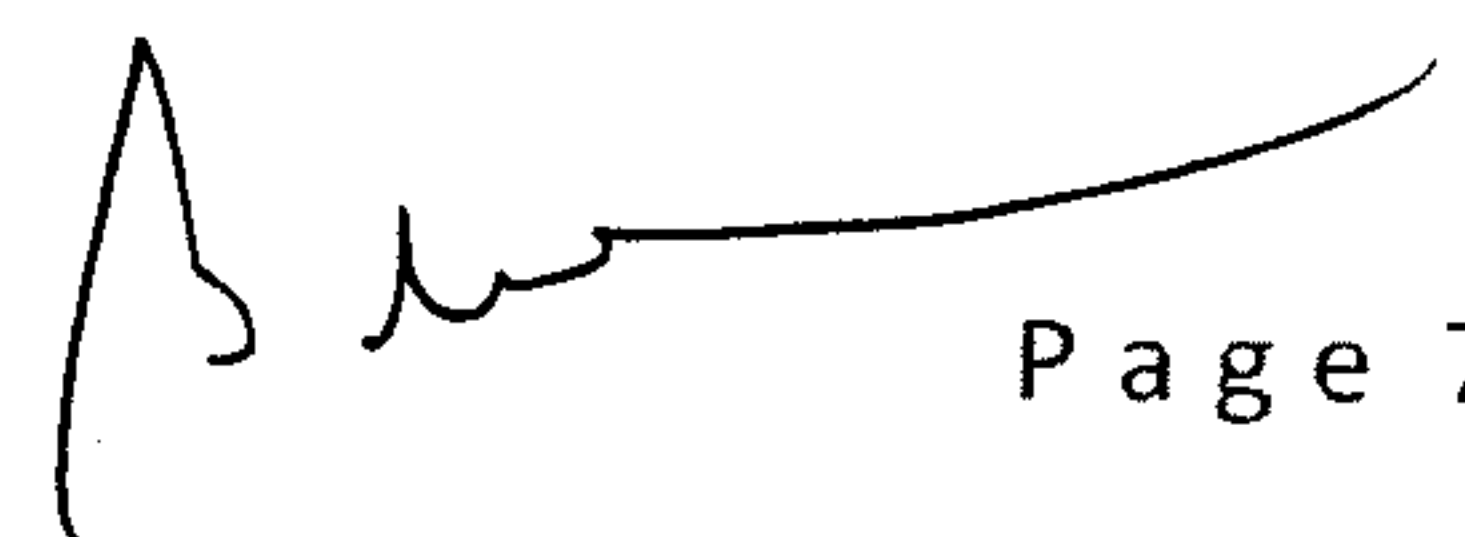


payment of expenses incurred by that office to the tune of Rs.10000/-.

16. It also appears from the records that Income Tax Department has not filed its representations to the Scheme and it may be presumed that the Income Tax Authorities do not have any objection to the Scheme.

17. In light of the aforesaid discussion, there does not appear any impediment to the sanctioning of the Scheme of Amalgamation, inasmuch as, from the material on record and on a perusal of the Scheme, the Scheme appears to be fair and reasonable and is not violative of any provisions of law, nor it appears to be contrary to public policy. The Scheme appears to be genuine and *bona fide* and in the interest of shareholders and creditors. As noticed earlier, none has come forward to oppose the Scheme. All requisite statutory compliances have also been fulfilled. This Tribunal is, therefore, satisfied that the Scheme of Arrangement in the nature of Amalgamation amongst the Petitioner Companies deserves to be sanctioned.

18. In the result, these Petitions are allowed. The Scheme which is at Annexure -G in C.P. (CAA) 9/NCLT/AHM/2017 and at Annexure - I in C.P. (CAA) 10/NCLT/AHM/2017, is hereby sanctioned and it is declared that the same shall be binding on Petitioner Companies namely, Icenet Private Limited and Magic



Engineers Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also ordered that the Transferor Company, namely Magic Engineers Private Limited, shall stand dissolved without winding up.

19. It is ordered that the Transferor Company shall not dispose of or destroy its books of accounts and other connected papers without the prior consent of the Central Government as per provisions of Section 239 of the Companies Act, 2013 and shall preserve the same.

20. It is further ordered that the Transferor Company shall ensure statutory compliance of all applicable laws and it shall not be absolved from its statutory liabilities in any manner. It is directed that the Transferee Company shall comply with the applicable provisions of Income Tax Act, 1961 and the allied Rules.

21. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of petition of Transferor Company, being C.P. (CAA) 10/NCLT/AHM/2017, and the said fees shall be paid by the transferee company.

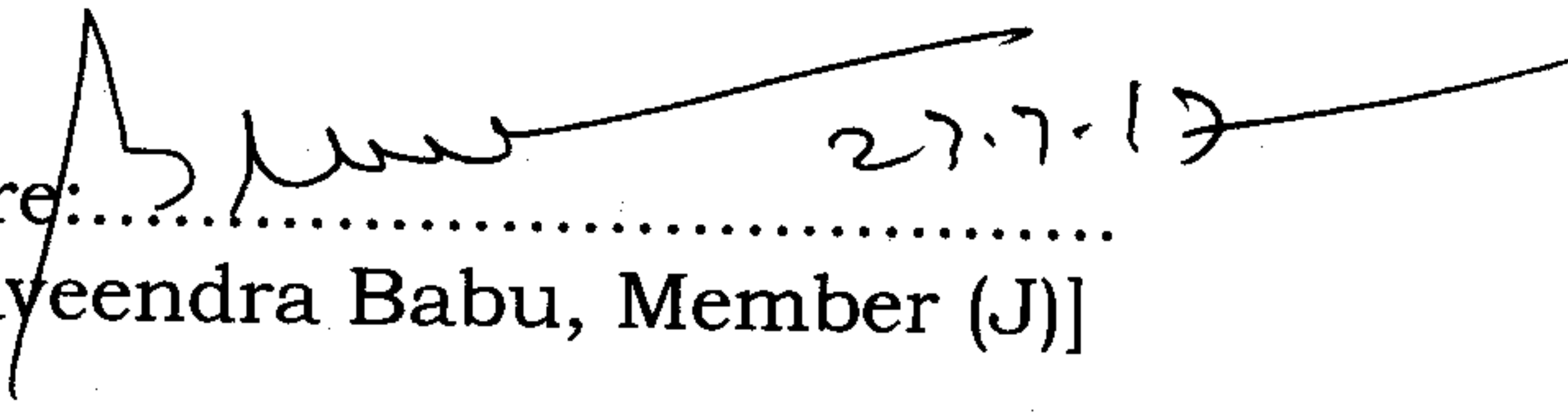
22. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned



Registrar of Companies, electronically, along with E-Form INC 28 as per the relevant provisions of the Companies Act, 2013.

23. Filing and issuance of drawn up order is hereby dispensed with. All the 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.

24. These Company Petitions are disposed of accordingly.

Signature:  27.7.17
[Bikki Rayeendra Babu, Member (J)]

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