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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) No. 40/NCLT/AHM/2017
With CA (CAA) No. 34/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 08.08.2017**

Name of the Company: Welspun Energy Pvt. Ltd.
WS Alloy Holding Pvt. Ltd.
Welspun Steel Ltd. (Joint Application)

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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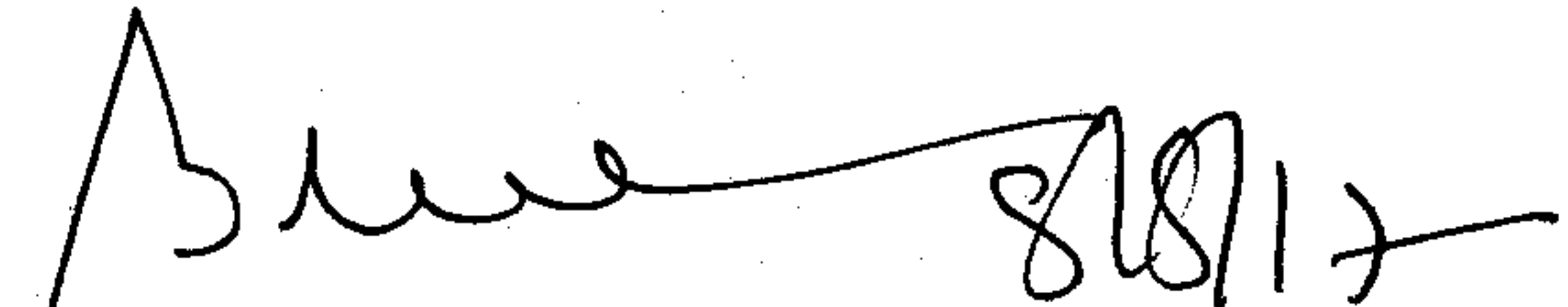
1.

2.

ORDER

None present for Petitioner.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 8th day of August, 2017.

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

CP(CAA) No. 40 of 2017

In the matter of :-

1. Welspun Energy Private Limited
(CIN:U51909GJ2002PTC041136),
A Company incorporated under the
Companies Act, 1956 and having its
registered office at Welspun City,
Village Versamedi, Taluka Anjar,
Gujarat - 370110.

..... Petitioner Transferor Company 1

2. WS Alloy Holding Private Limited
(CIN:U27100GJ2014PTC080182),
a Company incorporated under the
Companies Act, 1956 and having its
registered office at Survey no. 650,
Welspun City, Village Versamedi,
Anjar Kachchh, Gujarat 370110.

..... Petitioner Transferor Company 2

3. Welspun Steel Limited
(CIN: U27109GJ2004PLC044249),
A Company incorporated under the
Companies Act, 1956 and having its
registered office at Survey no. 650,
Welspun City, Village Versamedi,
Anjar Kutch Gujarat 370110.

..... Petitioner Transferee Company

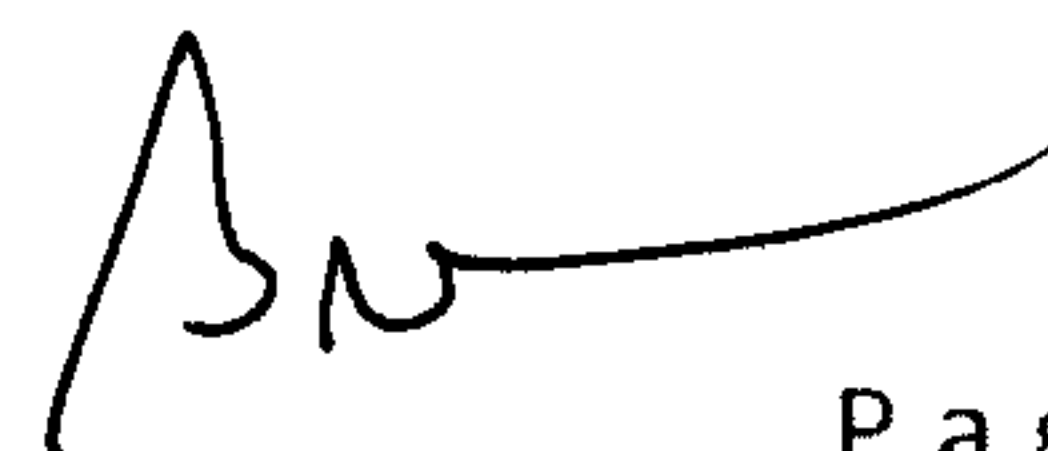
Order delivered on 8th August, 2017

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

Appearance:

Ms. Dharmishta Raval of M/s. Raval & Raval Advocates, alongwith
Mr. Yuvraj Thakore, Learned Advocates for the petitioner-companies.

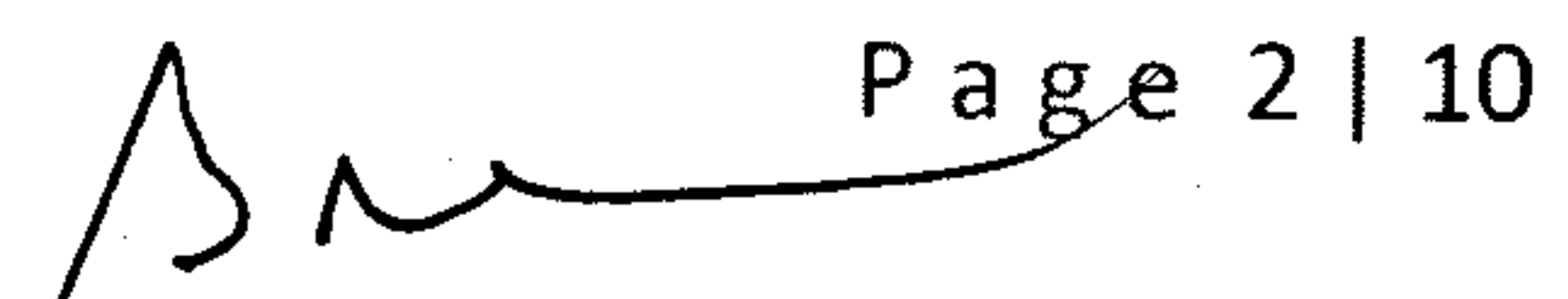
ORDER



1. These petitions under Sections 230 to 232 of the Companies Act, 2013 have been filed seeking sanction of proposed Scheme of Amalgamation of Welspun Energy Private Limited ('Transferor Company 1') and WS Alloy Holding Private Limited ('Transferor Company 2') and Welspun Steel Limited ('Transferee Company') ["Scheme" for short].

2. The petitioner companies herein i.e. Welspun Energy Private Limited and WS Alloy Holding Private Limited and Welspun Steel Limited, had filed a joint application, being CA (CAA) No.34 of 2017, before this Tribunal seeking dispensation of separate meetings of equity shareholders of all the petitioner companies, separate meetings of preference shareholders of Petitioner Transferor Company 2 and the Petitioner Transferee Company, separate meetings of secured creditors of the Petitioner Transferee Company and separate meetings of unsecured creditors of Petitioner Transferor Company 1 and the Petitioner Transferee Company. This Tribunal, vide its order dated 8th May, 2017, dispensed with convening and holding of the meetings of the equity shareholders, preference shareholders, secured creditors and unsecured creditors of the petitioner companies.

3. This Tribunal also directed the petitioner companies 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) Official Liquidator (only in the case of the Petitioner Transferor Companies) 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.

4. Pursuant to the notice, the Regional Director filed a representation by way of an affidavit dated 22nd June, 2017. The Official Liquidator filed a representation dated 30th June, 2017.

5. The petitioner companies, jointly filed the present petition before this Tribunal seeking sanction of the Scheme.

6. This Tribunal by order dated 3rd July, 2017, 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 Official Liquidator, Gujarat informing the date of hearing.

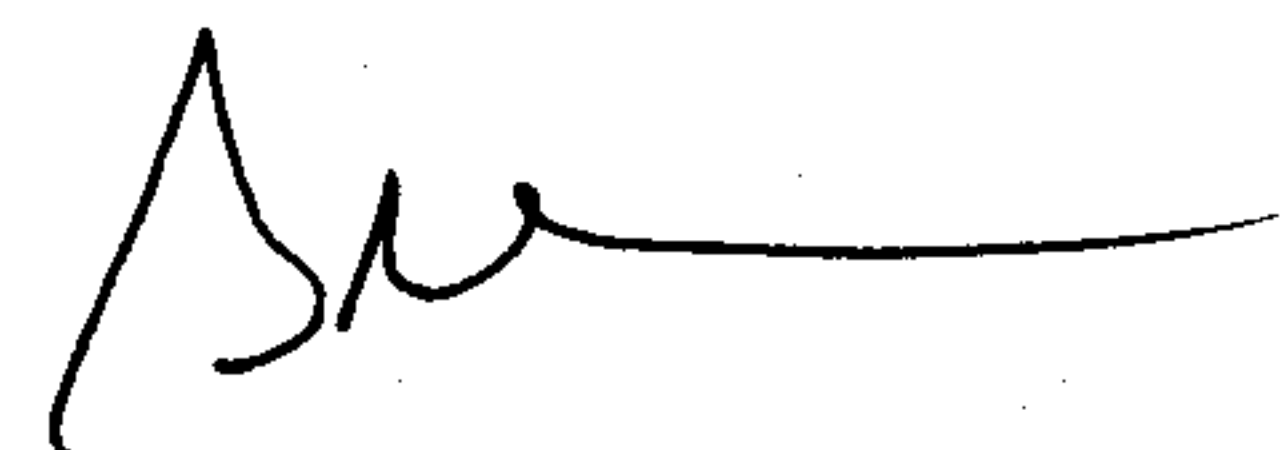
7. Pursuant to the aforesaid order dated 3rd July, 2017, passed by this Tribunal, the petitioner companies filed affidavit of service with this Tribunal on 21st July, 2017, submitting the

proof of service of publication and also proof of giving notice to the Regional Director, Gujarat and the Official Liquidator.

8. Heard learned Advocate, Ms. Dharmista Raval for M/s Raval & Raval, Advocates, for the petitioner companies.

9. The Regional Director in his representation stated that, as per the report of the Registrar of Companies, Gujarat, there is no complaint/ representation against the scheme of Amalgamation of the Petitioner Companies. 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.

10. The Official Liquidator has, in paragraph 12 of the representation stated that the petitioner companies be directed to rectify the typographical error in the Scheme in the Authorised Share Capital head of Welspun Steel Limited. In the affidavit filed by the Authorised Representative of the petitioner companies on 21st July, 2017, it stated that the petitioner companies shall rectify the typographical error in Number of Equity Shares under Authorised Share Capital head of Welspun Steel Limited i.e. instead of 11,00,90,000 shares, it should be 11,50,00,000 shares. In light of this statement in the affidavit, the observation of the Official Liquidator in paragraph 12 of the representation stands satisfied.



11. The Official Liquidator, in paragraph 14 of the representation, stated that Petitioner Transferor Company 1 be directed to provide clarification on the issue that there are no secured creditors however, as per MCA portal of the Petitioner Transferor Company 1 master data it is shown that company has created charge on movable property and book debts and the same is shown as status open. In the affidavit filed by the Authorised Representative of the petitioner companies on 21st July, 2017, following clarification is provided:

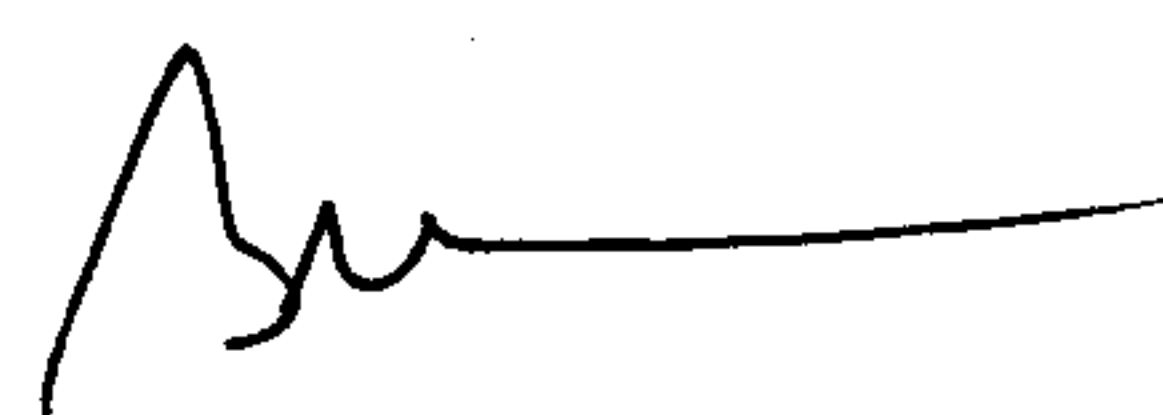
“The company has no secured creditors as of date. However, the company has obtained bank guarantees from banks who have in turn created charge on the company’s assets. The list of charges appearing on the website of Ministry of Corporate Affairs have been created for obtaining such guarantees. Further, a Chartered Accountant’s certificate certifying that the company has no secured creditors has been furnished as per part of the Company Scheme Application. Further, the above reason was also filed with the Official Liquidator vide letter dated 28th June 2017.”

The Authorised Signatory of the Petitioner Transferor Company No. 1 filed further affidavit clarifying the observations made by the Official Liquidator in respect of charges created by the banks on account of giving guarantee on behalf of the Petitioner Transferor Company No. 1.

12. It is stated in the additional affidavit that Welspun Energy Private Limited has, on date, only two guarantees in existence,



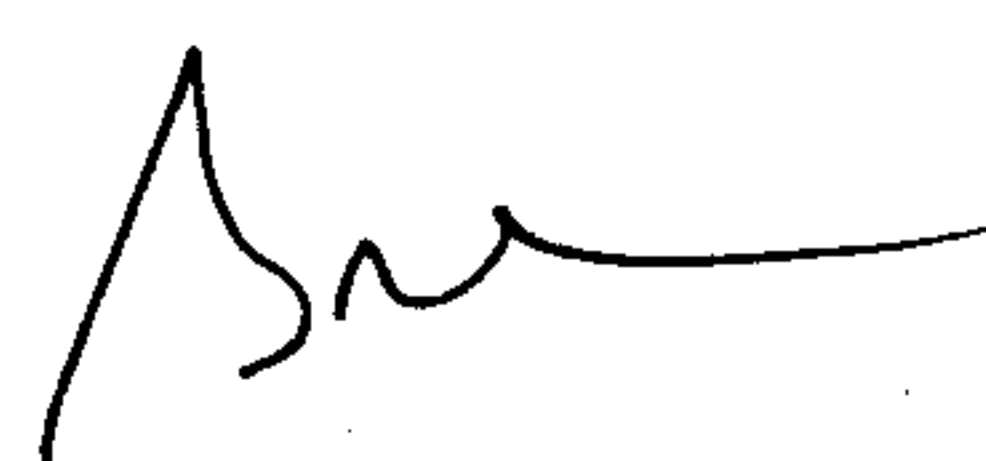
i.e. Central Bank of India and IDBI. It is further stated that these guarantees will only be invoked if any of the terms agreed with the State Government are not complied with. It is further stated that since the creation of the bank guarantees from 2012 onwards and till date there has not been any occasion for any of these guarantees to be invoked. It is stated that the Transferor Company 1 has no liability in presenti and there is no amount outstanding or payable in presenti. Even if a meeting of the creditors would have been called, the banks who furnished guarantee could not have voted as the value of their voting would be Nil. The Petitioner Transferor Company 1 in its audited balance sheet for the year 2015-16 has disclosed the availed limit of guarantee as contingent liability. According to the Guidance Note issued by the Institute of Chartered Accountants of India on "terms used in financial statements" has defined the term "contingent liability" as "an obligation relating to an existing condition or situation which may arise in future depending on occurrence or non-occurrence one or more uncertain future events". Further, the term "creditor" has also been defined to mean "amount owed by an enterprise on account of goods purchased or services received or in respect of contractual obligations". The Statutory Auditor, M/s Surekha and Associates, has given a certificate dated 27.07.2017 stating that none of the guarantees have been invoked and, accordingly, the charge represents a contingent liability and IDBI Bank and Central Bank are not the creditors of the company. The said



certificate is produced as Annexure – R3 to the additional affidavit. Therefore, the Transferor Company 1 states that there are no outstanding secured creditors of the Transferor Company 1. Further, it is stated that in view of Clause 4.4 of the Scheme, on the sanctioning of the Scheme, all the existing charges will continue and vest in the Transferee Company and, in that view of the matter also, the banks are not in any way affected by the Scheme. A reading of the above said further affidavit along with the certificate of the Chartered Account clearly indicates that IDBI Bank and Central Bank of India have not revoked the bank guarantees and, therefore, they come under the category of “contingent liability” and not under the term of “creditors”. In light of above clarification in the further affidavit, the observation of the Official Liquidator in paragraph 14 of the representation stands satisfied.

13. The Official Liquidator in his representation further sought the following directions to the petitioner companies:

- i. That the Petitioner Transferee Company should increase the authorized share capital, if required, as per the provision of section 61 of the Companies Act, 2013 by filing e-form with Registrar of Companies, Gujarat for implementation of the scheme;
- ii. That the petitioner companies shall preserve books of accounts, papers and records and shall not dispose of the same without prior permission of Central Government as per the provision of section 239 of the Companies Act, 2013;



- iii. 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;
- iv. 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.

14. In response to the representation of the Official Liquidator, the petitioner companies have, by way of an affidavit filed by the Authorised Representative of the petitioner companies on 21st July, 2017, submitted to comply with the above directions of the Tribunal and accordingly, the observations made by the Official Liquidator stand satisfied.

15. 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.

16. In the result, these petitions are allowed. The Scheme of Amalgamation, which is at Annexure K to the joint petition, is hereby sanctioned and it is declared that the same shall be

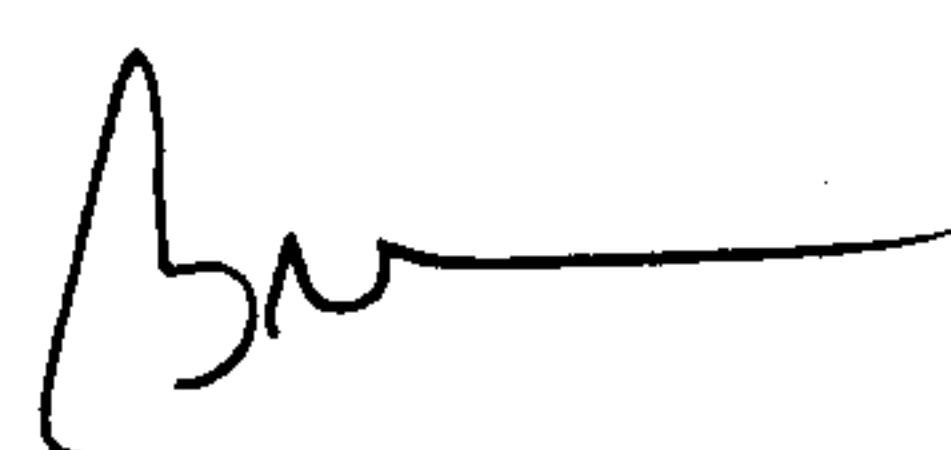
binding on the petitioner companies, namely, Welsun Energy Private Limited, WS Alloy Holding Private Limited and Welspun Steel Limited, their equity shareholders, preference shareholder, secured creditors and unsecured creditors and all concerned under the Scheme.

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

18. It is also ordered that the Transferor Companies shall ensure statutory compliance of all applicable laws and they shall not be absolved from their statutory liabilities in any manner.

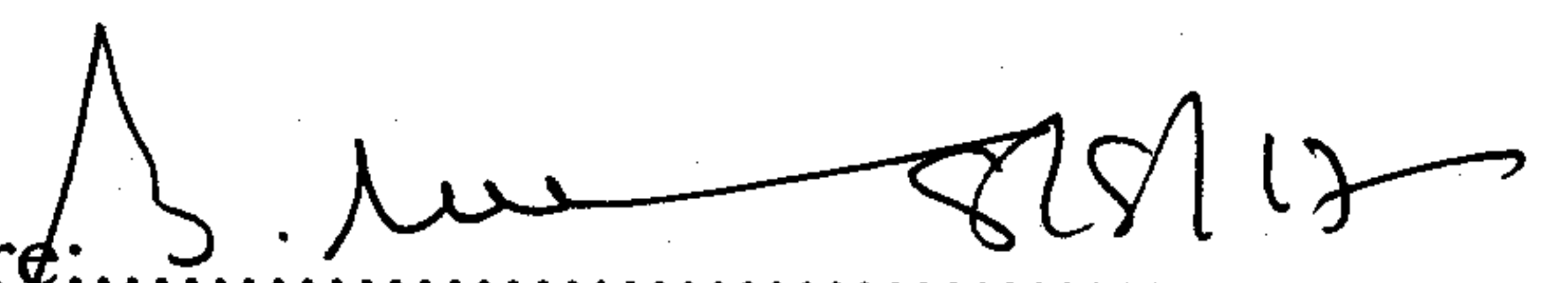
19. It is further ordered that the petitioner companies shall comply with Rule 17(2) of Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order, if any, for confirmation of the scheme in form INC-28 with the Registrar of Companies having jurisdiction over the Petitioner companies involved.

20. The fees of the Official Liquidator are quantified at Rs.10,000/- each in respect of the Transferor Companies and the said fees shall be paid by the Transferee Company.



21. 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.

22. This Company Petition is disposed of accordingly.

Signature:.....
[Bikki Raveendra Babu, Member (J)]

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