

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

PRINCIPAL BENCH

NEW DELHI

Company Application No. CA(CAA)32(PB)/2017

**Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE
PRESIDENT**

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

In the matter of:

Sections 230 and 232 and other applicable sections and provisions of the
Companies Act, 2013 read Companies (Compromises, Arrangements, and
Amalgamations) Rules, 2016

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

AMONGST

1) Kps Infraproject Limited.

A company incorporated under the Companies Act, 1956

Through its authorised representative: Shri Dinesh Kumar Saini

Having Registered Office at:

2481/9, Second Floor, Gurudwara Road, Karol bagh,

New Delhi-110015

.....Applicant Company No.1 / Transferor Company No 1

2) Kps Buildhome Limited

A company incorporated under the Companies Act, 1956

Through its authorised representative: Shri Dinesh Kumar Saini

Having its Registered Office at:

2481/9, Second Floor, Gurudwara Road, Karol bagh,

New Delhi-110015

.....Applicant Company No.2 / Transferor Company No. 2

3) Neon Buildtech Private Limited

A company incorporated under the Companies Act, 1956

Having its Registered Office at:

103, Roots Tower, Laxmi Nagar,

New Delhi-110015

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.....Applicant Company No.3 / Transferor Company No. 3

4) Vindhya Merchants Private Limited

A company incorporated under the Companies Act, 1956

Having its Registered Office at:

2481/9, Second Floor, Gurudwara Road,

Karol bagh,

New Delhi-110015

.....Applicant Company No.4 / Transferor Company No. 4

5) Anjuman Infratech Private Limited

A company incorporated under the Companies Act, 1956

Having its Registered Office at:

C1/203, Lajpat Nagar II,

New Delhi-110024

.....Applicant Company No.5/ Transferor Company No. 5

6) Shivangi Proptech Private Limited

A company incorporated under the Companies Act, 1956

Having its Registered Office at:

208, M.J Shopping Centre, 3-Veer Savarkar Block, Shakarpur

New Delhi-110092

Applicant Company No.6/ Transferor Company No. 6

7) Fortune Proptech Private Limited

A company incorporated under the Companies Act, 1956

Through its authorised representative: Shri Dinesh Kumar Saini

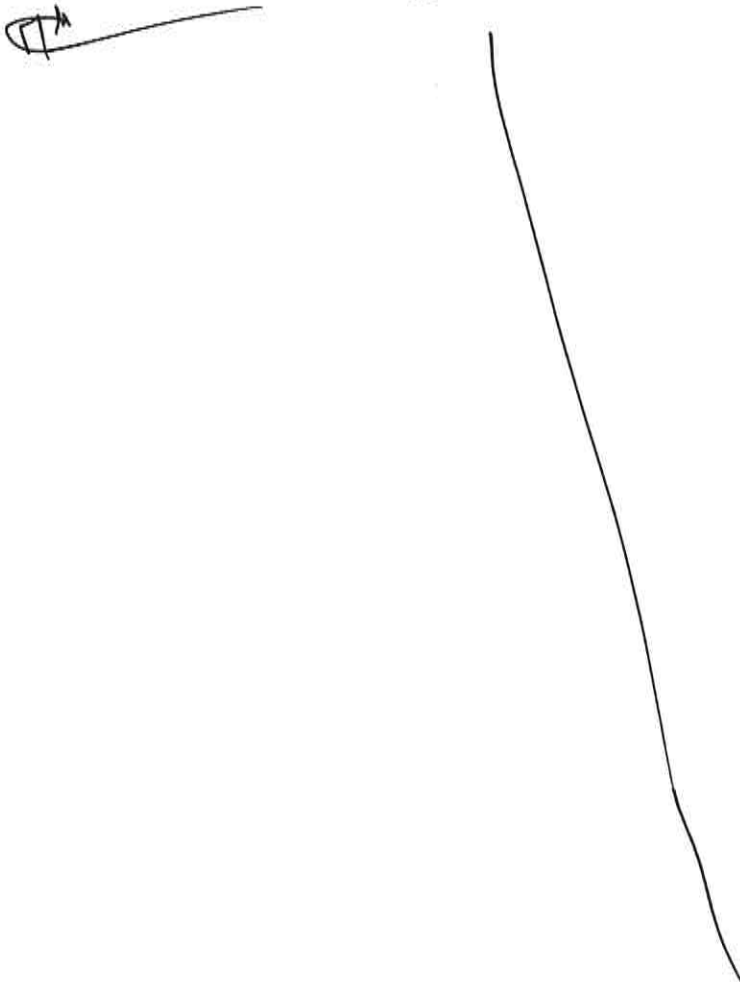
Having its Registered Office at:

C1/203, Lajpat Nagar II,

New Delhi-110024

.....Applicant Company No.7/ Transferee Company

Counsel for the Applicants: Ashish Middha

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Order

1. This is an application filed by the Applicant companies under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 (for brevity 'The Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'The Rules') in relation to the Scheme of Amalgamation (for brevity 'The SCHEME') proposed between the applicants. The said Scheme is also annexed as Annexure "75" to the application. The applicants above named have preferred the instant joint application for the following purpose as is evident from the reliefs sought for in Paragraph 149 of the Application, namely: -
 - a. Dispensing with the requirement of convening the meetings of the Equity Shareholders of the Transferor Companies no. 1-6 and the Transferee Company and also to dispense with the requirement of issue and publication of notices of the same and appointment of Chairman for the meetings;
 - b. Dispensing with the requirement of convening the meetings of the Secured Creditors of the Transferor Companies no. 1-6 and the Transferee Company and also to dispense with the requirement of issue



and publication of notices of the same and appointment of Chairman for the meetings;

- c. Dispensing with the requirement of convening the meetings of the Unsecured Creditors of the Transferor Companies No. 1-6 and the Transferee Company in view of their consents of more than 90% and also to dispense with the requirement of issue and publication of notices of the same and appointment of Chairman for the meetings;
- d. Pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2) An Affidavit in support of the application sworn for and on behalf of all the Transferor Companies has been filed by one Mr. Sanjay Agarwal, being the authorized representative of the Transferor Companies No 1,2,3,5,6 and the Transferee Company, and by one Mr. Pramod Agarwal being the authorized representative of the Transferor Company No. 4 along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Rules and it is also represented that the registered office of all the Applicant Companies

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are situated within the territorial jurisdiction of this Tribunal and fall within domain of Registrar of Companies, NCT, New Delhi & Haryana.

3) In relation to Transferor Company No. 1, in the Scheme marked as Annexure-75, it is represented that Transferor Company No. 1 has 12 Equity Shareholders, Transferor Company No.2 has 9 Equity Shareholders, Transferor Company No. 3 has 9 Equity Shareholders, Transferor Company No. 4 has 9 Equity Shareholders, Transferor Company No. 5 has 6 Equity Shareholders, Transferor Company No. 6 has 2 Equity Shareholders. It is further represented by the counsel for Applicants that all the Transferor Companies have no Secured Creditors. It is also represented that Transferor Company No. 4, 5 and 6 have Unsecured Creditors whose consents have been given and placed on record. In relation to Equity Shareholders of all the Transferor Companies, since consent from all of them have been obtained for the proposed Scheme, a prayer has been made for dispensing with holding of various meetings. In relation to the Secured Creditors, there is no requirement of holding the meeting as there are no Secured Creditors in all the Transferor Companies. In relation to the Unsecured Creditors, all the Transferor Companies seek dispensing with holding of meeting for the purpose of obtaining their approval to the proposed Scheme of



Amalgamation in view of consent having been obtained from all or due there being none as the case may be.

- 4) In relation to Transferee Company/ Applicant Company No. 7 in the Scheme marked as Annexure -"75", Learned Counsel represents that company has 4 Equity Shareholders from whom consent letters have been obtained and are placed on record. It is further represented by the counsel for Applicants that the Transferee Company has no Secured and only one Unsecured Creditor. In relation to the Equity Shareholders, Transferee Company seeks dispensing with holding of meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent having been obtained from all the Equity Shareholders of the Transferee Company. In relation to the Secured Creditors there is no requirement of holding the meetings as there are no Secured Creditors. . In relation to the Unsecured Creditors, Transferee Company seeks dispensing with holding of meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent having been obtained.

- 5) We have perused the application and the connected documents / papers filed along with the Scheme of Amalgamation contemplated between the Applicant companies.

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6) From the certificate of incorporation filed, it is evident that the Transferor Company No.1 was incorporated under the name of Brokerage Intl Ltd., under the Companies Act, 1956 as a Public Limited Company on 16.01.1995. Its name was changed to KPS Infraproject Limited on 21st July 2008. The authorized capital of the Applicant Company No.1, is Rs. 4,00,00,000/- divided into 40,00,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs. 1,47,55,010 divided into 14,75,501 Equity Shares of Rs 10/- each as on 21.03.2016.

7) The main objects of the Applicant Company No.1 as stated in the application are:

“a. To carry on the business as owners, builders, colonizers, developers, promoters, commission agents, proprietors, occupiers, civil contractors, maintainers and mortgagors of residential, commercial and ° industrial buildings, colonies, hotels, mills and factory' s sheds, and buildings and workshop buildings, cinema houses buildings, and to develop agricultural land and deal in all kinds of immoveable properties whether belonging to his company or not.

b. To undertake and to carry on the business of purchasing, selling, and developing any type of land or plot, whether residential, commercial , industrial, rural or urban that may belong to the



company or to any other person of whatever nature and to deal in land or immovable properties of any description or nature on commission basis and for that purpose to make agreements to sell the land of the Company or anybody else and to deal in building material and electrical and civil material. ”

8) From the certificate of incorporation filed, it is evident that the Transferor Company No.2 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name KPS Buildhome Limited on 7th March 2008. The authorized capital of the Transferor Company No. 2, as on 31.03.2016 is Rs.1,00,00,000 (Rs. One Crore only) divided into 10,00,00 equity shares of Rs. 10/- each. The issued, subscribed and Paid- up capital of the company is Rs.7,00,000 divided into 70,000 equity shares of Rs.10/- each as on 31.03.2016.

9) The main objects of the Transferor Company No.2 as stated in the application are-

“a. To carry on the business as owners, builders, colonizers, developers, promoters, commission agents, proprietors, occupiers, civil contractors, maintainers and mortgagors of residential, commercial and industrial buildings, colonies, hotels, mills and factory' s sheds, and buildings and workshop buildings, cinema houses buildings, and to


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develop agricultural land and deal in all kinds of immoveable properties whether belonging to his company or not.

b. To undertake and to carry on the business of purchasing, selling, and developing any type of land or plot, whether residential, commercial, industrial, rural or urban that may belong to the company or to any other person of whatever nature and to deal in land or immoveable properties of any description or nature on commission basis and for that purpose to make agreements to sell the land of the Company or anybody else and to deal in building material and electrical and civil material.”

10) From the certificate of incorporation filed, it is evident that the Transferor Company No.3 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name of Neon buildtech Private Limited on 26th August 2006 and continues to be known under the said name and style. The authorized capital of the Transferor Company No. 3 is Rs.30,00,000/- divided into 3,00,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid-up capital of the company is Rs.23,50,000 divided into 2,35,000 equity shares of Rs.10/- each as on 31.03.2016.

11) The main objects of the Transferor Company No.3 as stated in the application are-

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- a. *To engage in infrastructure development. real estate promoters, developers & project management association including civil, mechanical. electrical and other types erection, commissioning projects. project trading as well as consultant for execution of projects on turnkey basis for equipment of industrial, domestic and other purposes.*
- b. *To carry on the business as builders, consultant, civil engineers, architects, surveyors, designers, town planners, estimators, valuers. interior and exterior decorators, general and government civil contractors of immovable properties, all types of structural and piling engineering work, interior designing, land scaping and graphic.*

12) From the certificate of incorporation filed, it is evident that the Transferor Company No.4 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name of Vindhya Merchants Private Limited on 1st March, 1996 and continues to be known under the said name and style. The authorized capital of the Transferor Company No. 4 is Rs.45,00,000/- divided into 4,50,000 equity shares of Rs. 10/- each. The issued, subscribed and Paid-up capital of the company is Rs.41,79,000/- divided into 4,17,900 equity shares of Rs.10/- each as on 31.03.2016.

13) The main objects of the Transferor Company No.4 as stated in the application are-

- i. To carry on the business as distributers, agents, traders, merchants, contractors, brokers and otherwise deal in merchandise and articles of all kinds including clearing agent, freight contractors, forwarding agents, licensing agents, general brokers, and to carry on any kind of commercial business.*

14) From the certificate of incorporation filed, it is evident that the Transferor Company No.5 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name of Anjuman Infratech Private Limited on 1st February 2008 and continues to be known under the said name and style. Authorized Share Capital of the applicant/ transferor company no.5 is Rs.10,00,000/- divided into 1,00,000 Equity shares of Rs. 10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs.5.20,000/- divided into 52,000 equity shares of Rs.10/- each as on 31.3.2016.

15) The main objects of the Transferor Company No.5 as stated in the application are-



To Undertake as infrastructure, housing real estate promoters, developers & undertake project management including civil, mechanical, electrical and all other types of erection, commissioning projects, project trading as well as consultant, project trading as well as consultant for execution of projects on turnkey basis.

To carry on the business as builders, consultants, civil engineers, architects, surveyors, designers, town planners, estimators, interior and exterior decorators, • general and government civil contractors of immovable properties, all types of structural and piling engineering work, interior designing, land scaping and graphic.

16) From the certificate of incorporation filed, it is evident that the Transferor Company No.6 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name of Gulmohar Buildwell Private Limited on 20th January,2006. The name of the Company was changed to Shivangi Propotech Pvt. Ltd on 11.04.2012 and fresh certificate of incorporation was issued consequent to change of name. The Authorized Share Capital of the applicant/ transferor company no.6 is Rs.50,00,000/- divided into 5,00,000 Equity shares of Rs.10/- each. The present issued, subscribed and paid-up share capital of the Company is Rs.2,00,000/- divided into 20,000 equity shares of Rs.10/- each as on 31.3.2016.



17) The main objects of the Transferor Company No. 6 as stated in the application are-

- i) *To engage in real estate promoters, developers & project management association including civil, mechanical, electrical and other types erection, commissioning projects, project trading as well as consultant for execution of projects on turnkey basis.*
- ii) *To carry on the business as builders, consultants, civil engineers, architects, surveyors, designers, town planners, estimators, valuers, interior and exterior decorators, general and government civil contractors of immovable properties, all types of structural and piling engineering work. interior designing, land scaping and graphic.*

18) From the certificate of incorporation filed, it is evident that the Transferee Company/ Applicant Company No. 7 was incorporated with Registrar of Companies, NCT of Delhi & Haryana under the name of Fortune PropTech Private Limited on 1st February 2008 and continues to be known under the said name and style. The present Authorized Share Capital of the applicant/ transferee company is Rs.10,00,000/- divided into 1,00,000/- Equity shares of Rs. 10 each. The present issued, subscribed and paid-up share capital of the

company is Rs 10,00,000/- divided into 1,00,000 equity shares of Rs.10 each as on 31.3.2016.

19) The main objects of the Transferee Company as stated in the application are-

- i. *To Undertake as infrastructure, housing Real estate promoters, developers & undertake project management including civil, mechanical, electrical and all other types of erection, commissioning projects, project trading as well as consultant, project trading as well as consultant for execution of projects on turnkey basis.*
- ii. *To carry on the business as builders, consultants, civil engineers, architects, surveyors, designers, town planners, estimators, interior and exterior decorators, general and government civil contractors of immoveable properties, all types of structural and piling engineering work, Interior designing, land scaping and graphic.*

20) All the applicants have filed their respective Memorandum and Articles of Association as well as the last available audited financial statements as on 31st March, 2016.

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21) The Scheme of Amalgamation contemplates the amalgamation of Transferor Companies with Transferee Company. The circumstances which necessitate the said Scheme of Amalgamation, interalia as under:

- a. The proposed Scheme will result in formation of a larger Company enabling further growth and development of the businesses of the said companies. The Scheme will enable the undertakings and business of the said companies to obtain greater facilities possessed and enjoyed by one large company compared to small companies for raising capital, securing and conducting trade and business on favourable terms and other related benefits.
- b. The proposed scheme will enable the companies concerned to rationalize and streamline their management, businesses and finances and lead to a better economic control, over the running and management of the businesses and undertakings of the said companies.
- c. The businesses of the Transferor Companies and the Transferee Company could be combined conveniently and advantageously and



in such a manner so as to take up the activities, which will relate more to the business of the Transferee Company.

- d. The proposed scheme will result in reduction of overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, transaction cost, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity.
- e. The proposed Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined businesses.
- f. With the enhanced capabilities and resources at its disposal, the Amalgamated Company will have greater flexibility to market and meet customer needs and will be able to compete more effectively. Thus further strengthening, its market position in domestic and international markets.
- g. The amalgamation will enable the companies to pool in their financial, managerial, technical and other resources and use the

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financial, managerial, technical and marketing, and distribution expertise of each other.

22) Upon the Scheme becoming effective, the Share Exchange ratio will be:

- a) One point one (1.1) or say Eleven (11) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of KPS Infraproject Limited (Transferor Company).
- b) One point Two (1.2) or say Twelve (12) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of KPS Buildhome Limited (Transferor Company).
- c) Four point Five (4.5) or say Forty Five (45) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of Neon Buildtech Private Limited (Transferor Company).



- d) Four point eight (4.8) or say Forty Eight (48) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of Vindhya Merchants Private Limited (Transferor Company).
- e) Two point eight (2.8) or say Twenty Eight (28) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of Anjuman Infratech Private Limited.
- f) Zero point one (0.1) or say One (1) Equity Shares of Rs. 10/- (ten) each of Fortune Proptech Private Limited shall be allotted for every one (1) or say ten (10) Equity Share of Rs. 10/- (ten) each of Shivangi Proptech Private Limited (transferor company).

The figures have been rounded up for arriving at the exchange ratio.

23) The Board of Directors of the Companies, vide separate meetings held have unanimously passed resolutions and approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions have also been placed on record by the companies.



24) All the companies have submitted that no investigation proceedings are pending against them either under Sections 235 to 251 of the Companies Act, 1956 or any other law.

25) Taking into consideration the joint application and the documents filed therewith, we propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, Secured and Unsecured Creditors or dispensing with the same as well as issue of notices including paper publication which are as follow:-

A) In relation to the Transferor Companies No. 1 / Applicant Companies

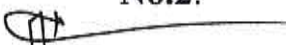
No.1:

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 12 equity shareholders in the company and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors and Unsecured Creditors is also dispensed with because there is no Secured Creditor and Unsecured Creditors.

B) In relation to the Transferor Company No. 2 / Applicant Companies

No.2:



(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 9 equity shareholders in the company and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors and Unsecured Creditors is also dispensed with because there is no Secured Creditor and Unsecured Creditors.

C) In relation to the Transferor Company No. 3/ Applicant Companies

No.3:


(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 9 equity shareholders in the company and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors and Unsecured Creditors is also dispensed with because there is no Secured Creditor and Unsecured Creditors.

D) In relation to the Transferor Company No. 4 / Applicant Companies

No.4:

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 9 equity shareholders in the company and their consent letters have been placed on record.

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(ii) The meeting of Secured Creditors is also dispensed with as there are no Secured Creditors and only one Unsecured Creditor whose consent is placed on record.

E) In relation to the Transferor Company No. 5 / Applicant Companies

No.5:

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 6 equity shareholders in the company and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with as there are no Secured Creditors and only six Unsecured Creditors whose consent is placed on record.

F) In relation to the Transferor Company No. 6 / Applicant Companies

No.6:

(i) With respect to Equity Shareholders, the holding of meeting is dispensed with as there are only 2 equity shareholders in the company and their consent letters have been placed on record.

(ii) The meeting of Secured Creditors is also dispensed with as there are no Secured Creditors and only six Unsecured Creditors whose consents are placed on record.



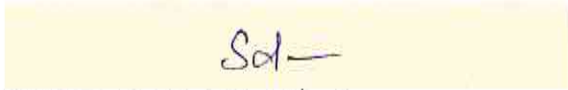
B) In relation to Transferee Company / Applicant Company No. 7:

(i) Meeting of the Equity Shareholders of the Transferee Company/ Applicant Company No.7 is dispensed with as there are only 4 Equity Shareholders whose consents have been placed on record.

(ii) The meeting of Secured Creditors and Unsecured Creditors is also dispensed with because there are no Secured Creditors and only one Unsecured Creditors.

The application stands allowed in the aforesaid terms.

27.06.2017


Sol—
(CHIEF JUSTICE (Rtd) M.M. KUMAR)

PRESIDENT


Sol—
(R. VARADHARAJAN)

MEMBER (J)