

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 49/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 14.06.2017**

Name of the Company: Swayam Shipping Services 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.	NAVIN PAHWA	ADV.	PETITIONER	Navin
2.				

ORDER

Learned Advocate Mr. Navin Pahwa present for Applicant.

Order pronounced in Open Court. Vide Separate Sheet.

B. Raveendra Babu 14.6.17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 14th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.A(CAA) NO. 49/NCLT/AHM/2017

**CORAM: SHRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL
(DATE: 14th day of June, 2017)**

In the matter of : -

Swayam Shipping Services Private Limited,
Suite 1010, Level 10,
"Pinnacle", Corporate Road,
Praladnagar,
Ahmedabad - 380015.

... Applicant
(Transferee Company)

Appearance: -

Mr. Navin Pahwa, Advocate, for the Applicant Company.

FINAL ORDER

(Date:14.06.2017)

1. Swayam Shipping Services Private Limited (Transferee Company) has filed this application under section 230 to 232 of the Companies Act, 2013, seeking dispensation of meetings of equity shareholders, secured and unsecured creditors of the applicant transferee company for the purpose of considering and, if thought fit, approving, with or without modification(s), a Scheme of Amalgamation of Mahadev Infrastructure Private Limited (Transferor Company) with Swayam Shipping Services Private Limited (Transferee Company) ["Scheme" for short].
2. The applicant is a private limited company. Paid up equity share capital of the applicant company is Rs. 77,48,920/-. The Board of Directors of the applicant company approved the Scheme of Amalgamation by passing board resolution dated 25th January 2017 in their Board Meeting.



3. The applicant company has stated that accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed in the Companies Act, 2013 and certificate of the auditors issued under Section 133 of the Companies Act, 2013 is produced as Annexure-H.
4. It is stated in the application that the Company has Nine equity shareholders and all the Nine equity shareholders have given their consent, in writing, in approval to the Scheme of Amalgamation waiving their right to convene the meeting of equity shareholders. Affidavits of the shareholders are produced as Annexure-F Colly. Reliance is placed on certificate of CS D. Ganatra & Co., practicing company secretary dated 1.3.2017, which certifies that the applicant company has nine equity shareholders.
5. Considering the fact that all the equity shareholders of the applicant company have given their consent, in writing, in approval of the Scheme of Amalgamation, the meeting of Equity Shareholders of the applicant company for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme is dispensed with.
6. So far as the creditors are concerned, it is submitted by the learned Advocate for the applicant that the proposed scheme would not affect the creditors, either secured or unsecured. The scheme even otherwise does not propose any compromise with the creditors. The applicant has produced certificate dated 31.3.2017 issued by M/s. Ketan Thacker & Associates, Chartered Accountants certifying that both before merger and after merger, the net worth of the transferee company is positive, the merger will add to the net worth of the



transferee company and that the creditors of the applicant transferee company will only benefit from the merger. It is further submitted that this being Transferee Company, the meeting of the Creditors is even otherwise not required to be held.

7. In view of the fact that the applicant company has not obtained consent letters either from the secured creditors or from the unsecured creditors, this Tribunal is of the view that the meetings of both the secured as well as unsecured creditors cannot be dispensed with.

8. Having considered the entire material on record and having heard to the learned counsel for the applicant company, this Tribunal passes the following order: -

- (1) A meeting of secured creditors of the applicant company convened and held on 28th July, 2017 at 11:00 am at 202, 2nd Floor, Rajkamal-1, Plot No.348, Ward No. 12-B, Gandhidham-370201, for the purpose of considering and if thought fit, approving, with or without modification, the Scheme.
- (2) A meeting of unsecured creditors of the applicant company convened and held on 28th July, 2017 at 12:00 noon at 202, 2nd Floor, Rajkamal-1, Plot No.348, Ward No. 12-B, Gandhidham-370201, for the purpose of considering and if thought fit, approving, with or without modification, the Scheme.
- (3) At least one month before the date of the aforesaid meetings, an advertisement about convening of the said



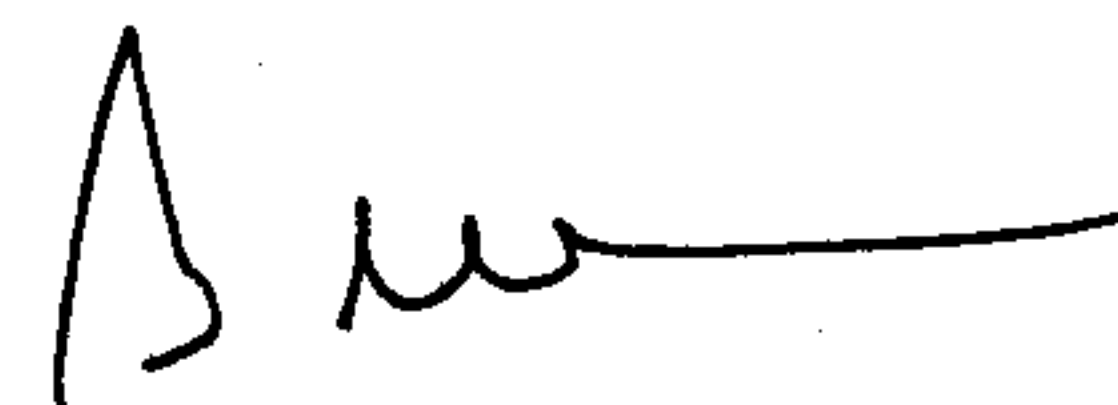
meetings, indicating the date, place and time as aforesaid, shall be published in "Indian Express" English Daily and Gujarati Daily "Sandesh", having circulation in Ahmedabad. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the prescribed form of proxy can be obtained free of charge from the registered office of the applicant company or at the office of its advocates viz. Thakkar and Pahwa, Advocates, 71, New York Tower-A, Opp. Muktidham Derasar, Thaltej, Ahmedabad-380054.

- (4) In addition, at least one month before the date of the aforesaid meetings of secured and unsecured creditors of the applicant company to be held as aforesaid, a notice convening the said meetings indicating the day, date, place and time aforesaid, together with a copy of the scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with Section 230 to 232 of the Act and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the creditors of the applicant company at their respective registered or last known addresses either by registered post or speed post or air mail or by courier. The notices shall be sent to the creditors appearing on the record of applicant transferee-company as on the date of filing of the application.
- (5) Shri Nalin Ganatra, Practising Company Secretary and, in his absence Shri Jitendra Unadakat, Chartered Accountant shall be the Chairperson of the meetings of

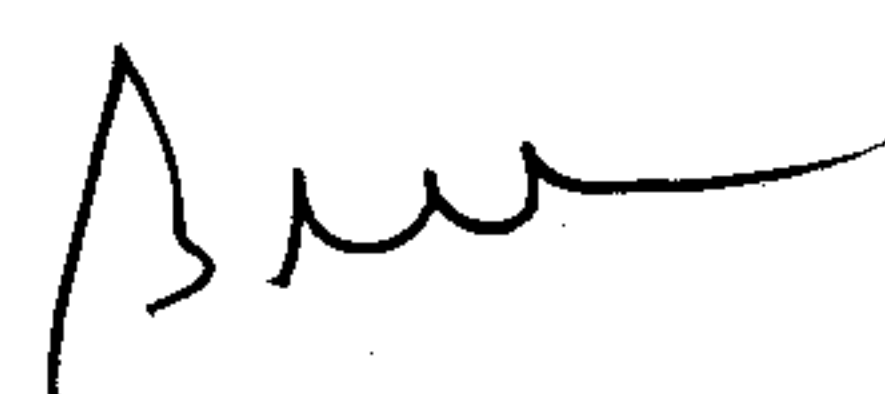


Secured Creditors and Unsecured Creditors to be held on 28th July, 2017 and in any adjourned meeting(s).

- (6) Mr. Dharmendra Ganatra, Company Secretary is appointed as Scrutinizer for the meetings of secured and unsecured creditors of the applicant company.
- (7) The Chairperson appointed for the aforesaid meetings shall issue advertisements and send out notices of the meetings referred to above. The Chairperson is free to avail the services of the applicant company or any agency for carrying out the aforesaid directions. The Chairperson shall have all powers under the Articles of Association of the applicant company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural question that may arise at the meetings or adjournment thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meetings by any person (s) and to ascertain the decision of the sense of the meetings of the secured and unsecured creditors by polling paper/ ballot.
- (8) The quorum for the meetings of the secured creditors and unsecured creditors shall be 2 (two) persons, respectively.
- (9) Voting by proxy or by authorised representative is permitted provided that the proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the aforesaid meetings is filed with the applicant company at the registered office, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

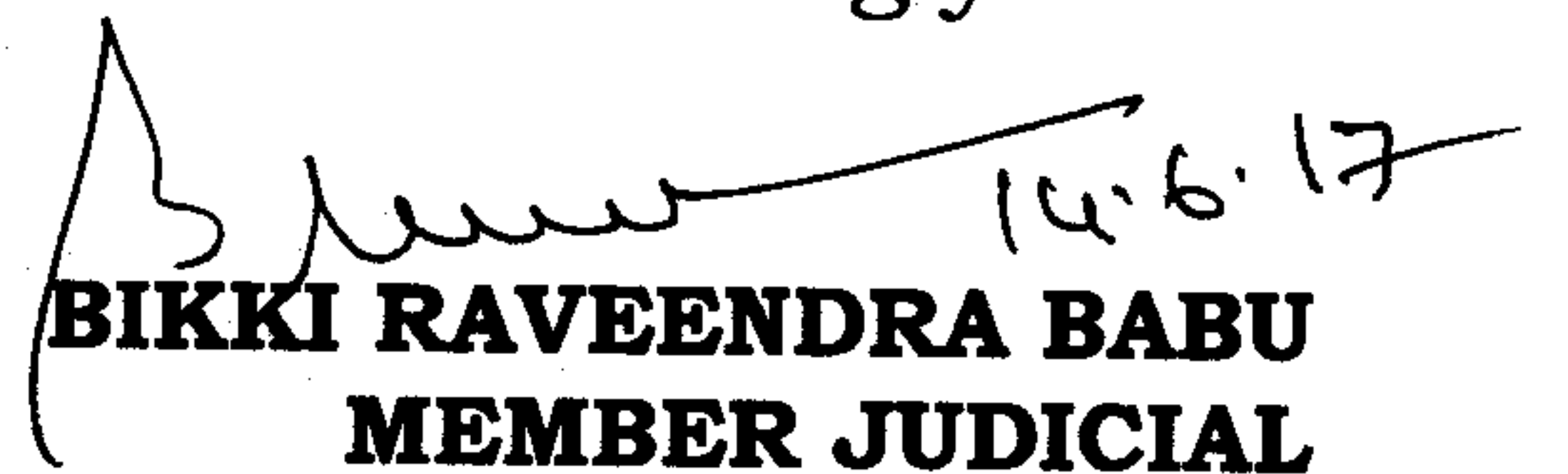


- (10) The number and value of secured creditors and unsecured creditors of the applicant company shall be in accordance with the records or registers of the applicant company and where the entries in the records or registers are disputed, the Chairperson of the meetings shall determine the number or value, as the case may be, for the purposes of the meetings.
- (11) The Chairperson to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisements of meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.
- (12) It is further ordered that the Chairperson shall report to this Tribunal on the results of the meetings in Form CAA 4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form CAA 4 within 7 (seven) days after conclusion of the meetings.
- (13) In compliance of subsection (5) of Section 230 and Rule 18 of the Companies (CAA) Rules, 2016, the applicant company shall send a notice of meetings under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No. CAA.3 along with a copy of the Scheme of Amalgamation, explanatory statement and the disclosures mentioned under Rule 6 to (i) the Central Government through the Regional Director, North Western Region, (ii) The Registrar of Companies, (iii) The Income Tax Authorities stating that the representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it shall be presumed that they have no objection to make on the proposed Scheme. The said notice (s) shall be sent



forthwith after notice is sent to the creditors of the applicant company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it shall be deemed that they have no representation to make on the proposed amalgamation.

9. This company application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 14th day of June, 2017.

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