

27.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 36/NCLT/AHM/2017 (New)
Gujarat High Court C.P. No. 531/2016 in C.A. No. 521/2016 (Old)**

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 26.04.2017**

Name of the Company: Sterling Addlife India Pvt. Ltd.


Section of the Companies Act: Section 391-394 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NAVIN PAHWLA	ADV.	Petitioner	(Navin)
2.				

ORDER

Learned Advocate Mr. Navin Pahwa present for Petitioner.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 26th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 26th day of April, 2017

T.P. No.35/NCLT/AHM/2017

With

T.P. No.36/NCLT/AHM/2017

In the matter of: -

1. Addlife Investments Private Limited,
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at
1st Floor, Viral House, Plot No.59,
Near JBR Corporate House,
Sindhu Bhavan Road, Bodakdev,
Ahmedabad – 380 054,
Gujarat. ... Petitioner of T.P. No. 35/2017
(Transferor Company)

And

2. Sterling Addlife India Private Limited,
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at
Sterling Hospital Road, Memnagar,
Ahmedabad – 380 052,
Gujarat. ... Petitioner of T.P. No. 36/2017
(Transferee Company)

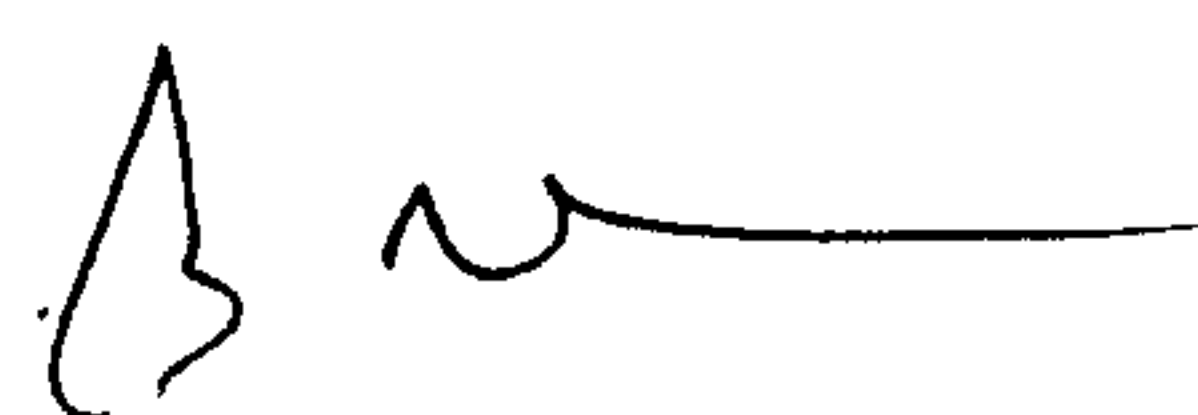
Appearance: -

1. Mr. Navin Pahwa, Advocate, M/s Thakkar & Pahwa, Advocates
for the petitioner-companies.
2. Mr. Pritesh L. Parikh, Advocate, for the Official Liquidator,
Gujarat High Court, in both the matters.

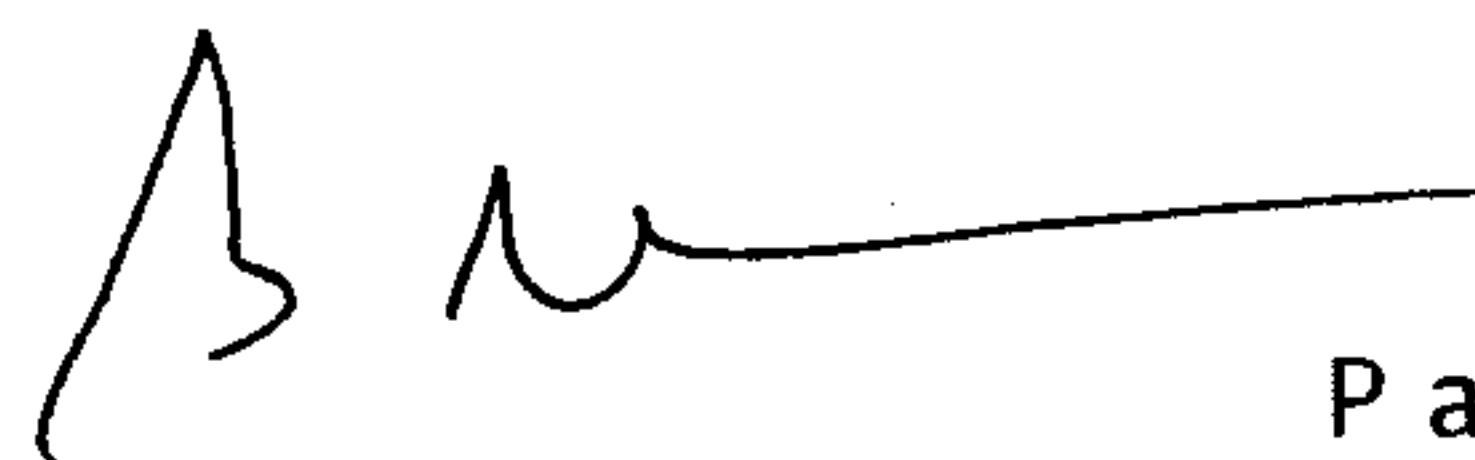
COMMON FINAL ORDER

(Date: 26.04.2017)

1. These petitions under Sections 391 to 394 of the Companies Act, 1956 have been filed seeking sanction of a proposed scheme of amalgamation of Addlife Investments Private Limited (transferor-company) with Sterling Addlife India Private Limited (transferee-company) ["Scheme" for short].



2. The petitioner of T. P. No.35 of 2017, i.e. Addlife Investments Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.522 of 2016, seeking dispensation of meetings of the equity shareholders, secured creditors and unsecured creditors of the said company. The Honourable High Court, vide its order dated 9th December, 2016, was pleased to dispense with the convening and holding of the meetings of equity shareholders, secured creditors and unsecured creditors of the petitioner transferor-company.
3. The petitioner of T. P. No.36 of 2017, i.e. Sterling Addlife India Private Limited had filed an application in the Honourable High Court of Gujarat, being Company Application No.521 of 2016, seeking dispensation of meetings of the equity shareholders of the said company. The Honourable High Court, vide its order dated 9th December, 2016, was pleased to dispense with the meeting of equity shareholders of the petitioner transferee-company.
4. The petitioners, thereafter, filed Company Petitions Nos. 533 and 531 of 2016, respectively, in the High Court of Gujarat seeking sanction of the Scheme. The Honourable High Court, by its orders, dated 14th December, 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 Nos.533 of 2016. The High Court also directed publication of notice of hearing of the petitions in the English daily newspaper "Indian Express" and the Gujarati daily newspaper "Financial Express", both Ahmedabad editions. The High Court permitted publication of a common advertisement in respect of both the petitions. The High Court also dispensed with publication of notice in the Gujarat Government Gazette.



5. Pursuant to the order dated 29th November, 2016 passed by the Honourable High Court, the petitioner-companies published the notice of hearing of the petitions in the English daily newspaper, "Indian Express" and in Gujarati daily newspaper, "Financial Express", both Ahmedabad edition, on 27th December, 2016. The notices in respect of hearing of both the Company Petitions were served upon the Regional Director and the notice of hearing in respect of Company Petition No.533 of 2016 was served upon the Official Liquidator on 29th December, 2016 and affidavits to that effect were also filed on behalf of the petitioner-companies.
6. Subsequently, the Honourable High Court, in view of Rule 3 of The Companies (Transfer of Pending Proceedings) Rules, 2016, vide orders dated 10th February, 2016, transferred the aforesaid Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos.35 and 36 of 2017. Thereafter, this Tribunal vide orders dated 6th March, 2017, directed the petitioner-companies to publish notice in the newspapers in which already publication had been made informing the date of hearing. This Tribunal also directed the petitioner-companies to issue notices to the equity shareholders and creditors not less than 10 days before the date of hearing informing them about the date of hearing and calling for their objections. The petitioner-companies were also directed to give notice to the following statutory authorities: -
- a. The Central Government through the Regional Director, Gujarat.
 - b. The Income Tax Authority.
 - c. The Registrar of Companies.

The petitioner-company in T.P. No.35 of 2017 was further directed to serve notice on the Official Liquidator. Accordingly, the petitioner-companies published a common notice of hearing

of T.P. Nos.35 and 36 of 2017 in English daily "Indian Express" and Gujarati daily "Financial Express", both Ahmedabad edition, on 15th March, 2017. Notices of hearing of the petitions were also served upon statutory authorities, namely, (i) the Central Government through the Regional Director, (ii) the Income Tax Authority, (iii) the Registrar of Companies, Gujarat, Ahmedabad, and (iv) the Official Liquidator and affidavits of service dated 14th March, 2017 have been filed by Directors of the petitioner-companies. The petitioner-companies have also filed affidavit of service of notices to equity shareholders and creditors, as directed by this Tribunal. The petitioner transferor- company also sought no objection from the Reserve Bank of India vide communication dated 21st November, 2016.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 22nd March, 2017. The Official Liquidator filed a representation dated 5th April, 2017. In response to the letter addressed by the transferor-company to the Reserve Bank of India seeking its no objection to the proposed Scheme, the Reserve Bank of India vide communication dated 31st March, 2017 informed the transferor-company that it has no objection to the proposed Scheme. Similarly, pursuant to the publication of notice of hearing of the petitions in newspapers, no objection to the scheme has been received from the public at large. Likewise, pursuant to the notices issued to shareholders and creditors of the petitioner-companies, no shareholder or creditor has raised any objection to the proposed scheme.
8. Heard learned Advocate, Mr. Navin Pahwa, for M/s Thakkar & Pahwa, Advocates, for the petitioner-companies and learned Advocate, Mr. Pritesh L. Parikh, for the Official Liquidator.
9. In paragraph 2(e) of the common representation filed by the Regional Director, it is observed that the petitioner-transferor

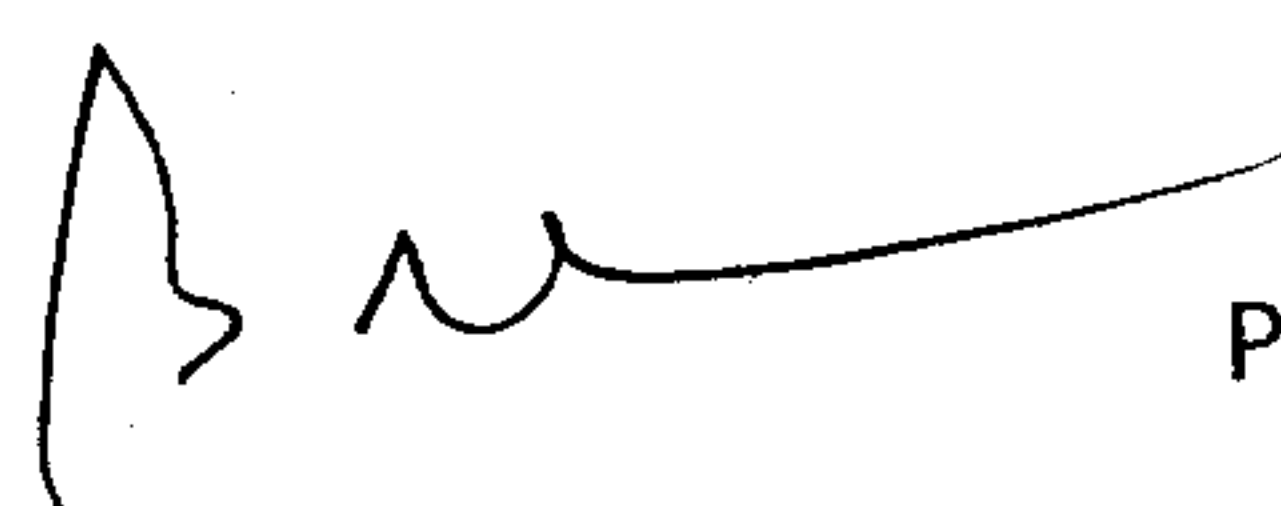
company is registered with the Reserve Bank of India as a Non-Banking Finance Company vide Certificate No.B.01.00544 dated 28.05.2015 and has not produced a copy of NOC from the RBI. Therefore, this Tribunal may direct the resulting company to ensure compliance of guidelines issued by RBI from time to time in the matter. In the common affidavit filed in response to the representation of the Regional Director, it is stated in paragraph 2 that the Reserve Bank of India, vide communication dated 31st March, 2017, addressed to the Managing Director of Addlife Investments Private Limited, has informed that it has no objection to the proposed Scheme of amalgamation of the transferor-company with Sterling Addlife India Private Limited and a copy of the said communication received from RBI is produced vide Annexure-I. In the said communication from RBI, M/s Addlife Investments Private Limited was advised to approach the bank for cancellation of CoR and surrender the original CoR to the bank for cancellation within 15 days from the date of order of this Tribunal. The petitioner-company is directed to follow the said advice. In light of the aforesaid, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(e) of the representation stands satisfied.

10. The Regional Director, in paragraph 2(f) of the representation, observed that one of the employees of the company had misappropriated funds to the tune of Rs.3,87,905/- during the preceding year and that, though investigations in that regard had been completed and the employee concerned came to be dismissed after recovering the amount misappropriated with interest, it is necessary that the internal control system of the company should be made strong for avoiding such instances. Therefore, this Tribunal may be pleased to direct the petitioner-transferee company to place on record all the facts in the matter. In response to the observations made by the Regional Director in paragraph 2(f), it

is stated in paragraph 3 of the common affidavit filed on behalf of the petitioner-companies that the petitioner transferee-company has strong internal control system and that, as the representation suggests, the investigation was completed and the employee concerned was dismissed. It is also stated that the company recovered the amount misappropriated with interest during the relevant year. In light of the aforesaid, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(f) of the representation stands satisfied.

11. In paragraph 2(g) of the representation of the Regional Director, it is mentioned that the Tribunal may be pleased to direct the petitioner-companies to place on record all the relevant facts in respect of contingent liabilities of the transferee-company in order to satisfy that the contingent liabilities, in case they get invoked, will not affect the financial position of the company adversely so as to impact the liquidity of the company and its continuance/going concern concept. In response to the observations made in paragraph 2(g), it is stated in the common affidavit that all relevant facts, which are required to be disclosed, are, in fact, disclosed. It is also stated in the common affidavit that the contingent liabilities, even if invoked, would not impact the liquidity of the company and its continuance/going concern concept. Along with the common affidavit, the petitioner transferee-company produced at Annexure II a certificate from its Auditors certifying that the contingent liabilities as shown in the notes to Financial Statements No.27 to the balance sheet as at 31.3.2016 of the petitioner transferee-company, even if invoked, would not impact the liquidity of the company and its continuance/going concern concept. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(g) of the common representation stand answered.

12. The Regional Director, in paragraph 2(h) of the common representation, stated that pursuant to the circular of the Ministry of Corporate Affairs bearing No.2 / 1/ 2014 dated 15.01.2014, he invited specific comments from the Income Tax Department giving 15 days' time to the Income Tax Department to state their objections, if any, to the proposed scheme. It is stated by the Regional Director in the said paragraph that no reply has been received by the Directorate from the Income Tax Department. The Regional Director, therefore, requested this Tribunal to direct the petitioner-companies to undertake compliance of provisions of the Income Tax Act and the Rules. Thereafter, vide communication dated 31st March, 2017, the Regional Director forwarded to this Tribunal copy of a letter dated 17.03.2017 received from the office of Pr. Commissioner of Income-tax-1, Ahmedabad, along with report of the Assessing Officer. In the report of the Assessing Officer, i.e. Income-tax Officer, Ward-1(1)(1), Ahmedabad, it is stated since M/s Addlife Investments Pvt. Ltd. will be amalgamating with M/s Sterling Addlife India Pvt. Ltd, all the present outstanding demand and demand that would be raised in future, if any, in the case of M/s Addlife Investments Pvt. Ltd., will become payable by M/s Sterling Addlife India Pvt. Ltd. (Amalgamating Company) as it is going to remain in existence. It is also stated in the report of the Assessing Officer that the amalgamating company is solely liable for any demand already created or become payable due to any of the proceedings related to the Income-tax Department, in future, in respect of outstanding demand prior to amalgamation of M/s Addlife Investments Pvt. Ltd. and that the responsibility will be on the Director of the amalgamating company, i.e. Sterling Addlife India Pvt. Ltd. It is also stated in the said report of the Assessing Officer that other matters/issues, if any, would be taken care of as per the Income Tax Act/Rules. In light of the above report of the Assessing Officer, this Tribunal is of the view that the observations of the



Regional Director at paragraph 2(h) of the common representation stand satisfied.

13. The Regional Director also stated that, as per the report of the Registrar of Companies, Gujarat, dated 30.01.2017, there are no complaints against the petitioner-companies and no complaint/representation against the Scheme of arrangement was received by the office of the Registrar of Companies. It is also stated 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.
14. In response to the notice to the Official Liquidator in Company Petition No.533 of 2016 (T.P. No. 35 of 2017), the Official Liquidator filed his representation dated 5th April, 2017. On perusal of the said representation, the Official Liquidator, at paragraph 19, has submitted that the affairs of the transferor-companies have not been conducted in a manner prejudicial to the interest of their members or to public interest. With regard to the observations made by the Official Liquidator at paragraph 20 of the representation, in paragraph 6 of the affidavit in response to the representation of the Official Liquidator dated 7th April, 2017, it is stated that the petitioner-company shall preserve its books of accounts, papers and records and shall not dispose of the same without prior permission of the Central Government as required under the provisions of Section 239 of the Companies Act, 2013. In respect of the observations made at paragraph 21 of the representation, it is stated in paragraph 4 of the affidavit dated 7th April, 2017 that the accounting treatment proposed in the scheme is in conformity with the accounting standards prescribed under the provisions of Section 133 of the Companies Act, 2013. In this regard, the Managing Director and Group CEO of the petitioner transferee-company filed another affidavit on 10th April, 2017 producing therewith a certificate of Chartered Accountant certifying that


the proposed accounting treatment contained in clause 5 of the proposed scheme of amalgamation is in terms of the provisions of Sections 391 and 394 of the Companies Act, 1956 as amended and the corresponding provisions of the Companies Act, 2013 with reference to its compliance with the applicable Accounting Standards specified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014 and other Generally Accepted Accounting Principles. In paragraph 22 of the representation, the Official Liquidator 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 shall not be absolved from any of its statutory liability, in any manner. It is observed that the petitioner transferee-company shall comply with the provisions of all applicable laws and shall not be absolved from any of its statutory liability on sanctioning of the Scheme. The Official Liquidator requested the Tribunal to direct the petitioner-company to pay cost of Rs. 10,000/- to the office of the Official Liquidator. No objection was received from the public at large pursuant to the publication of notice of hearing in newspapers.

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 391 to 394 of the Companies Act, 1956 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-C to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the petitioner-companies, namely, Addlife Investments Private Limited and Sterling Addlife India Private Limited, and their equity shareholders, creditors and all

concerned under the scheme. It is also declared that the petitioner-company, namely, Addlife Investments Private Limited, shall stand dissolved without winding up.

17. The fees of the Official Liquidator are quantified at Rs.10,000/- in respect of T.P. No. 35 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.
18. 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.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
26th day of March, 2017.

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