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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 27/NCLT/AHM/2017
With Gujarat High Court CA no. 542/2016**

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 26.07.2017**

Name of the Company: Heena Electronics Pvt. Ltd.

Section of the Companies Act: Sections 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. | Vaibhavi K. Parikh | Advocate | petitioner |  |
|----|--------------------|----------|------------|---|

2.

ORDER

Learned Advocate Ms. Vaibhavi Parikh present for Petitioner.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 26th day of July, 2017.

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

CP(CAA) No.25 of 2017

With

CP(CAA) No.26 of 2017

And

CP(CAA) No.27 of 2017

In the matter of :-

1. Heena Electrovision Private Limited
A Company registered under the
Companies Act, 2013 and having its
Registered Office at Shop No. 2,
Ground Floor, Ram Niwas Building,
Mohan Ni Chawl, Varacha Road,
Surat – 395 006,
in the State of Gujarat.

...

Petitioner of C.P. (CAA) 25/2017
(Transferor Company No. 1)

AND

2. Heena Electrozone Private Limited
A Company registered under the
Companies Act, 2013 and having its
Registered Office at Shop No. 2,
Ground Floor, Ram Niwas Building,
Mohan Ni Chawl, Varacha Road,
Surat – 395 006,
in the State of Gujarat.

...

Petitioner of C.P. (CAA) 26/2017
(Transferor Company No. 2)

WITH

3. Heena Electronics Private Limited
A Company registered under the
Companies Act, 1956 and having
its Registered Office at Plot No. 38,
Ground Floor, Ambika Industrial Estate,
Saroli, Dist. – Surat – 395 002
in the State of Gujarat.

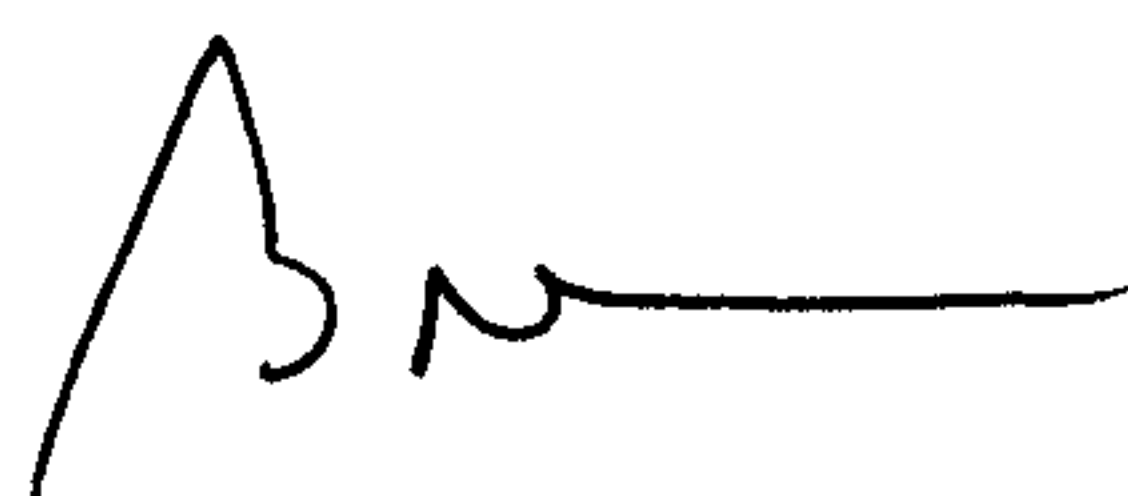
... Petitioner of C.P. (CAA) No. 27/2017
(Transferee Company)

Order delivered on 26th July, 2017

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

Appearance:

Ms. Vaibhavi Parikh, Advocate for the Petitioners

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COMMON FINAL ORDER

1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Arrangement in the nature of Amalgamation of Heena Electrovision Private Limited and Heena Electrozone Private Limited (Transferor Companies) with Heena Electronics Private Limited (Transferee Company) and Reorganization of Capital of Heena Electronics Private Limited ('Scheme' of short).
2. The Petitioner of CP (CAA) No. 25 of 2017 i.e. Heena Electrovision Private Limited had filed an application in the Honourable High Court of Gujarat, being Company Application No. 541 of 2016, seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors of the said Company. There were no Secured Creditors of the Petitioner Company as on the date of filing the application. The Honourable High Court, vide order dated 14th December, 2016, dispensed with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner Company in view of the consent letters given by the Equity Shareholders and Unsecured Creditors of the Petitioner Company.
3. The Petitioner of CP (CAA) No. 26 of 2017 i.e. Heena Electrozone Private Limited had filed an application in the Honourable High Court of Gujarat, being Company Application No. 540 of 2016, seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors of the said Company. There were no Secured Creditors of the Petitioner Company as on the date of filing the application. The Honourable High Court, vide order dated 14th December, 2016, dispensed with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner Company in view of the consent letters given by the Equity

Shareholders and Unsecured Creditors of the Petitioner Company.

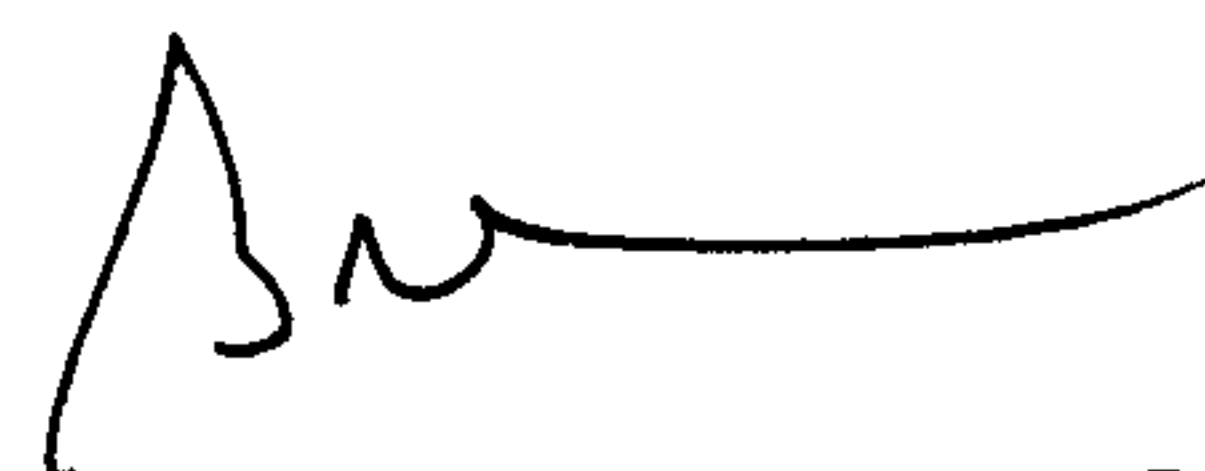
4. The Petitioner of CP (CAA) No. 27 of 2017 i.e. Heena Electronics Private Limited had filed an application in the Honourable High Court of Gujarat being Company Application No. 542 of 2016, seeking dispensation of the meetings of the Equity Shareholders of the said Company. The Honourable High Court, vide order dated 14th December, 2016, dispensed with the convening and holding of the meeting of the Equity Shareholders of the Petitioner Company in view of the consent letters given by the Equity Shareholders of the Petitioner Company. It was reported to the Honourable High Court that the Petitioner Company did not have any Secured Creditor and/or Unsecured Creditor. Further, the procedure prescribed under Section 101(2) of the Companies Act, 1956 and under Rules 46 to 65 of the Companies (Court) Rules, 1959 have also been dispensed with by the Honourable High Court.

5. The Petitioner Companies thereafter on 29th March, 2017 filed present petitions before this Tribunal seeking sanction of the Scheme approved by the Board of Directors of the Petitioner Companies. Thereafter, this Tribunal, vide order dated 13th April, 2017, ordered that notice of hearing of the petitions shall be advertised in English Daily Newspaper, "Indian Express" and Gujarati Daily Newspaper, "Divya Bhaskar" both having circulation in Surat not less than ten days before the date fixed for hearing, calling for their objections, if any, on or before the date of hearing. This Tribunal also ordered issuance of notice to (a) The Central Government through the Regional Director, Gujarat; (b) The Registrar of Companies, Gujarat; (c) The Income Tax Authorities and (d) Official Liquidator [in CP (CAA) Nos. 25 and 26 of 2017], asking them to file their representations, if any, within 30 days from the date of receipt of notice with a condition that in case no representation is received by this Tribunal, it

shall be presumed that the above said authorities have no representation to make on the proposed Scheme of Arrangement.

6. Accordingly, the Petitioner Companies published notice of hearing of CP (CAA) Nos. 25, 26 and 27 of 2017 in English Daily, "Indian Express" and Gujarati Daily, "Divya Bhaskar" both Surat Editions on 4th May, 2017. Notices of hearing of the petitions were also served upon the statutory authorities, namely, (i) the Central Government through the Regional Director; (ii) the Registrar of Companies, Gujarat ; (iii) the Income Tax Authority; (iv) the Official Liquidator and affidavit of service and publication dated 18th May, 2017 have been filed by the Director of the Petitioner Companies. It is also stated in the respective Company Petitions on affidavit that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Petitioner Companies have also produced a certificate of the Chartered Accountant in their respective petition.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 13th June, 2017. The Official Liquidator filed a representation dated 24th May, 2017. However, no representation has been received from the Income Tax Authorities before this Tribunal. Similarly, pursuant to the publication of notice of hearing of the petitions in the newspapers, no objection to the Scheme has been received from the public at large. Likewise, pursuant to the notices issued to the equity shareholders and unsecured creditors in case of the Petitioner Transferor Companies and equity shareholders in case of Petitioner Transferee Company, no shareholder, and/or unsecured creditor has raised any objection to the proposed scheme.



8. In response to the common representation filed by the Regional Director, the Petitioner Companies have filed reply affidavit dated 20th June, 2017 in respective petitions. The Petitioner Transferor Companies have filed reply affidavit dated 20th June, 2017 to the representation filed by the Official Liquidator.

9. Heard learned Advocate Ms. Vaibhavi Parikh for the Petitioner Companies.

10. In Paragraph 2(e) of the common representation filed by the Regional Director, the Regional Director has stated that the Petitioner Transferee Company shall amend the capital clause and object clause as per Clause 22 of the Scheme. With regard to the said observation by the Regional Director, it is stated vide Paragraph 4 in reply affidavit dated 20th June, 2017 that pursuant to the sanction of the Scheme by the Honourable Tribunal, the Petitioner Transferee Company shall amend the capital clause and object clause of the Company.

11. In Paragraph 2(f) of the common representation filed by the Regional Director, the Regional Director has stated that as per the report of the Registrar of Companies dated 3rd May, 2017 there are no complaints against the Petitioner Companies including any complaint/representation against the Scheme of Arrangement of the Petitioner Companies is received by the office of the Registrar of Companies.

12. It is also stated by the Regional Director in Paragraph 2(g) of the common representation filed 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.

13. In response to the notice to the Official Liquidator in CP (CAA) Nos. 25 and 26 of 2017, the Official Liquidator filed his

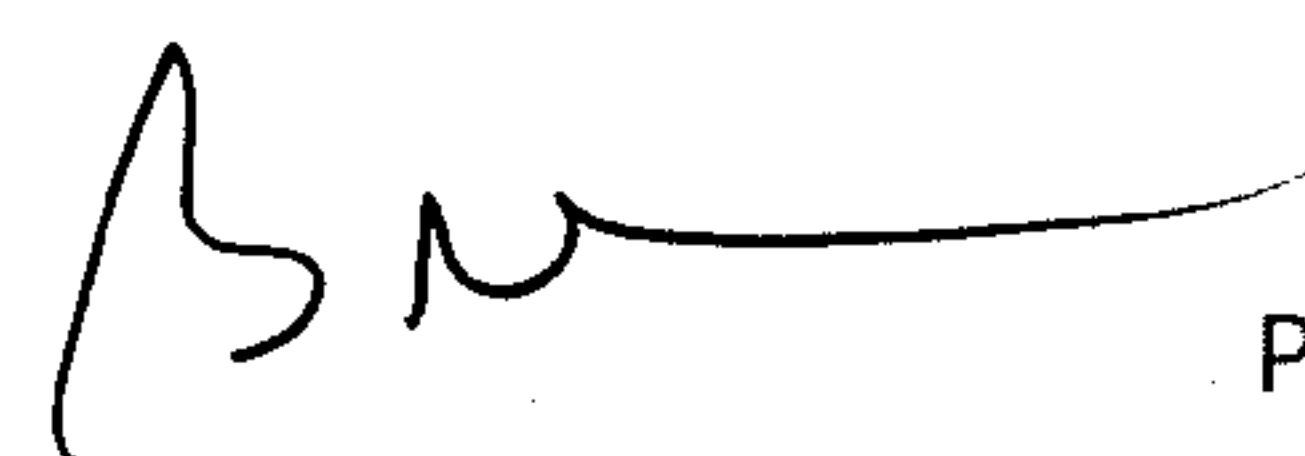
representation dated 24th May, 2017. On perusal of the said report, the Official Liquidator at Paragraph Nos. 9 and 13 has observed that the Scheme should be applicable to “all the employees” instead of “all permanent employees” and had requested the Tribunal to direct the Petitioner Companies to amend the Clause 19.1 of the Scheme. In response to the said observation made by the Official Liquidator in his report, in Paragraph No. 8(a) of the affidavit dated 20th June, 2017 filed by the Petitioner Companies, it is stated that the employees other than permanent employees that are employed by the Transferor Companies are as per the contractual obligations and therefore cannot be absorbed by the Transferee Company as the validity of the contract is for a specific period. In any case, the employees other than the permanent employees are automatically covered under the scheme as all the contracts entered into by the Transferor Companies which are valid as on the effective date shall be binding on the Transferee Company and therefore this becomes an automatic absorption of all the employees other than permanent employees by the Transferee Company. The Clauses 5.12(b) and 17 of the Scheme clearly envisages that all the agreement/contracts shall continue in full force and effect in favour of the Transferee Company and therefore, it is not required to amend Clause 19.1 of the Scheme. The Petitioner Transferee Companies have given an undertaking to absorb all the employees of the Transferor Companies upon the Scheme coming into effect.

14. The Official Liquidator at Paragraph Nos. 11 and 14 of his report has observed that on the scheme becoming effective the authorized share capital of the Petitioner Transferee Company shall increase and requested the Tribunal to direct the Petitioner Transferee Company to increase its authorized share capital as per provision of Section 61 of the Companies Act, 2013 by filing E-form with the Registrar of Companies, Gujarat for implementation of scheme. In response to the said observation

made by the Official Liquidator in his report, in Paragraph No. 8(b) of the affidavit dated 20th June, 2017 filed by the Petitioner Companies, it is undertaken to comply with the requirements of the provisions of 61 (1) of the Companies Act, 2013 and file requisite forms with the Registrar of Companies and pay requisite amount of fees for increase in the authorized share capital pursuant to the scheme coming into effect.

15. The Official Liquidator at Paragraph Nos. 12 and 15 of his report has requested the Honourable Tribunal to direct the Petitioner Companies to amend Clause 8.2 and 10.1 of the Scheme by inserting 9,000 Equity Shares of Rs. 10/- each instead of 90,000 Equity Shares of Rs. 10/- each for implementation of the Scheme as, upon the Scheme becoming effective, issued, subscribed and paid up share capital of the Petitioner Transferee Company shall be reduced from Rs. 1,00,000/- to Rs. 10,000/- by cancelling existing paid up capital to the extent of Rs. 90,000/- divided into 9,000 Equity Shares of Rs. 10/- each. In response to the said observation made by the Official Liquidator in his report, in Paragraph No. 8(c) of the affidavit dated 20th June, 2017 filed by the Petitioner Companies, it is stated that there is an inadvertent typographical error in mentioning the number of Equity Shares pursuant to reduction taking place and the petitioner transferor companies have given undertaking to carry out the amendment.

16. With regard to the observation made by the Official Liquidator at Paragraph 17 of the report, in Paragraph 8(d) of the affidavit dated 20th June, 2017, it is stated that the Petitioner Transferor Companies undertake to preserve books of accounts, papers and records and shall not dispose of the same without the prior permission of the Central Government as per the provision of Section 239 of the Companies Act, 2013.



17. In Paragraph 18 of the report, the Official Liquidator has 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 Companies be not absolved from any of its statutory liability in any manner. In reply given in Paragraph 8(e) of the affidavit, the Petitioner Transferor Companies have stated that the Petitioner Transferor Companies ensure statutory compliance of all applicable laws and that the Petitioner Transferor Companies shall not be absolved from any of their statutory liabilities. However, it is observed that upon sanctioning of the Scheme, the Petitioner Transferor Companies shall not be absolved from any of their statutory liabilities, in any manner.

18. In Paragraph 19 of the report, the Official Liquidator has observed that the Petitioner Transferor Companies may be dissolved without following the process of winding-up in terms of sub Section 3(d) of Section 232 of the Companies Act, 2013. It has also been observed that the Petitioner Transferor Companies being dissolved, the fee, if any, paid by the Petitioner Transferor Companies on its Authorized Share Capital shall be set-off against any fees payable by the Petitioner Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub Section 3(i) of Section 232 of the Companies Act, 2013.

19. In Paragraph 20 of the report, the Official Liquidator has requested the Tribunal to direct the Petitioner Transferor Companies to comply with Rule 17(2) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of Order for Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies. In reply given in Paragraph 8(g) of the affidavit, the Petitioner Transferor Companies have stated that the Petitioner Transferor Companies shall comply with Rule 17(2) of the Companies (Compromises,

Arrangements and Amalgamations) Rules, 2016 with respect to filing of the Order of Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies.

20. In light of the aforesaid, this Tribunal is of the view that the observations made by the Official Liquidator in his representation, stands satisfied.

21. The Official Liquidator has also requested the Tribunal to direct the Petitioner Transferor Companies to pay cost of Rs. 10,000/- to the office of the Official Liquidator.

22. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers.

23. Pursuant to the observation made by the Official Liquidator in Paragraph Nos. 12 and 15 of his report dated 24th May, 2017, this Tribunal vide order dated 5th July, 2017 permitted the Petitioner Companies to file Application for correction in Clause Nos. 8 and 10 of the Scheme on the ground that it is a typographical mistake. The Petitioner Companies then filed Interlocutory Applications being IA Nos. 184, 185 and 186 of 2017 seeking permission to amend Clauses 8.2 and 10.1 of the Scheme of Arrangement and this Tribunal, by a separate order made today, allowed the said applications.

24. 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.

25. In the result, these Petitions are allowed. The Amended Scheme of Arrangement which is at Annexure – III to the

interlocutory applications, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, Heena Electrovision Private Limited, Heena Electrozone Private Limited and Heena Electronics Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Companies namely Heena Electrovision Private Limited and Heena Electrozone Private Limited shall stand dissolved without winding up.

26. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of CP (CAA) Nos. 25 and 26 of 2017 each. The said fees to the Official Liquidator shall be paid by the Transferee Company.

27. Filing and issuance of drawn up orders as 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.

28. These Company Petitions are disposed of accordingly.

Signature:  26.7.12
[Bikki Raveendra Babu, Member (J)]

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