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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**IA 82/2017 with CP(CAA) No. 35/NCLT/AHM/2017
in Gujarat High Court CA no. 526/2016, 527/2016, 528/2016, 529/2016**

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 03.08.2017**

Name of the Company: Shanker Global Pvt Ltd.
Spectrum Tubes Pvt Ltd.
Hindprakash Corporation Pvt Ltd.
Laxmi Alutrade Pvt 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>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar
2.				

ORDER

Learned Advocate Ms. Swati Soparkar present for Original Petitioner.

Common order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 3rd day of August, 2017.

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

CP(CAA) No.35/NCLT/AHM/2017

With

IA No.82/NCLT/AHM/2017

In the matter of :-

- (i) Shanker Global Private Limited,
 - (ii) Spectrum Tubes Private Limited,
 - (iii) Hindprakash Corporation Private Limited and
 - (iv) Laxmi Alutrade Private Limited
- All the companies incorporated under the Companies Act, 1956 and having their Registered offices respectively at :
- (i) 201, Hindprakash House, Plot No.10/6, Phase-I, GIDC, Vatva, Ahmedabad-382 445 In the state of Gujarat.
 - (ii) 203, Hindprakash House, Plot No.10/6, Phase-I, GIDC, Vatva, Ahmedabad-382 445 In the state of Gujarat.
 - (iii) 206, Hindprakash House, Plot No.10/6, Phase-I, GIDC, Vatva, Ahmedabad-382 445 In the state of Gujarat.
 - (iv) 207, Hindprakash House, Plot No.10/6, Phase-I, GIDC, Vatva, Ahmedabad-382 445 In the state of Gujarat.

..... Petitioner Companies

Order delivered on 3rd August, 2017

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

Appearance:

Mrs. Swati Soparkar, Advocate for the petitioners.

COMMON ORDER

1. This is a joint petition filed by four companies under Section 230 and 232 read with sections 66 and 52 of the Companies Act, 2013 (corresponding to Sections 391 to 394 read

with sections 100 to 103 of the Companies Act, 1956) seeking sanction of this Tribunal to a Composite Scheme of Arrangement involving demerger, Amalgamation and Restructure of Share Capital between Shanker Global Private Limited, Spectrum Tubes Private Limited, Hindprakash Corporation Private Limited and Laxmi Alutrade Private Limited ("Scheme" for short).

2. The Scheme envisages demerger and transfer of the De-merged Undertaking, viz. Trading Undertaking of Shanker Global Private Limited, (hereinafter referred to as the "De-merged Company" or "the Transferor Company-1"/SGPL) to Spectrum Tubes Private Limited (hereinafter referred to as "the Resulting Company"/ STPL) and amalgamation of Residue Undertaking of Shanker Global Private Limited, as well as Hindprakash Corporation Private Limited (hereinafter referred to as "the Transferor Company-2"/ HCPL) with Laxmi Alutrade Private Limited (hereinafter referred to as "the Transferee Company"/ LAPL); as well as Restructure of Share Capital of Shanker Global Private Limited), the De-merged Company.

3. The said petitioner companies had originally initiated the proceedings before the Hon'ble High Court of Gujarat in the form of Company Applications No. 526 to 529 of 2016, seeking dispensation of the meetings of shareholders and creditors. Vide respective orders dated 14th December 2016, the Hon'ble High Court dispensed with the meetings of shareholders of all the

companies in view of the consent in writing given by all the Equity shareholders of all the companies and the Preference Shareholders of Hindprakash Corporation Private Limited, the Transferor Company-2. The meetings of the unsecured creditors of two Transferor Companies viz. Shanker Global Private Limited and Hindprakash Corporation Private Limited were dispensed with in view of the consent in writing given by all the unsecured creditors of these two companies. In case of the Resulting Company, viz. Spectrum Tubes Private Limited and the Transferee Company viz. Laxmi Alutrade Private Limited, the meetings of the unsecured creditors were dispensed with accepting the contention that their rights and interests were not affected as a result of the proposed scheme. There were no Secured Creditors of any of these companies and hence their meetings were not necessary.

4. Thereafter, the petitioner companies were required to file the present petitions before this Tribunal in view of the provisions of the Companies Act, 2013 being brought into effect.

5. However, it was realized that in order to comply with the applicable provisions of the Companies Act, 2013, some modifications in the proposed Scheme were necessary. The same pertain to the Issue of shares by the Resulting Company and the Transferee Company as consideration to the shareholders of the respective De-merged/Transferor Company-1 and the Transferor

Company-2 as well as the proposed transfer and consolidation of the Authorised Capital. The present petitioners therefore moved an application on 17th April 2017 before this Tribunal seeking leave to amend the said Scheme of Arrangement by granting the proposed modifications. It was also further prayed that meetings of the Shareholders of all the companies to consider the Modified Scheme be dispensed with. In support of the said application, the Valuation Report and Share Exchange Certificate provided by M/s Kedia and Kedia Associates, the Auditors of the Companies, was placed on record as Annexure 'C' to IA No. 82 of 2017. The Board of Directors of all the companies had passed the resolutions for the proposed modifications and the same were placed on record as Annexure 'E' to the said IA. All the Equity shareholders of all the companies and preference shareholder of one of the Petitioner companies had given their written consents on affidavits to the proposed modifications and the Modified Scheme annexed to the said IA as Annexure-'G'. By an additional affidavit dated 9th May 2017, it was submitted that there are no Secured and Unsecured Creditors of any of the petitioner companies as on date. The said submission was supported by respective certificates from the Chartered Accountants. The said application was to be heard finally with the joint Petition filed by the petitioners.

6. The present petition was filed along with the aforesaid IA and the same was admitted on 25th May 2017. The date of



hearing was fixed as 12th July 2017. Directions were issued to publish Notice of Hearing of Petition in the newspapers viz. English daily, Indian Express and Gujarati daily, Sandesh at least before 10 days of the date of hearing of the petition and to include the specific reference to the proposed Modifications in the Scheme. Further directions were also issued to serve notice of the petition to the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax Authorities for all the companies and (iv) Official Liquidator for the Transferor Companies, at least before 30 days of the date of hearing of the petition.

7. Pursuant to the said directions, notices were duly served by the petitioner companies on the statutory authorities on 7th and 8th June 2017 and publications were duly made in the newspapers on 22nd June 2017. An affidavit of service and publication dated 6th July 2013 confirming the same has been placed on record. However, an additional affidavit dated 12th July 2017, has been filed confirming publication of corrigendum in English newspaper on 11th July 2017, for a lapse of missing sentence.

8. Heard learned advocate, Mrs. Swati Soparkar, appearing for the petitioner companies. It has been submitted that representation in form of a common affidavit dated 8th July 2017 has been received from the Regional Director for all the

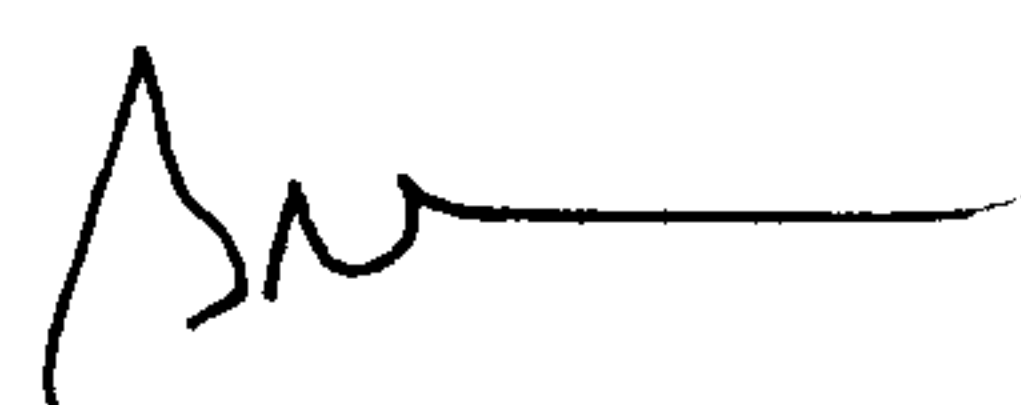
companies. The said representation contains no adverse observations with regard to the modifications or the modified scheme. Vide Para 2 (a), (b) and (c) it confirms the receipt of notice, nature of proposal and modified consideration based on the valuation report by Chartered Accountant as well as the rationale of the proposed Scheme. Vide para 2 (d) it is pointed out that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director vide para 2 (e) has confirmed that he has no other observation/submission and that the proposed Scheme of Arrangement is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

9. In response to the Notice of the petition served upon the Office of the Official Liquidator for the two Transferor companies, respective representations dated 8th July 2017 have been filed by the Official Liquidator. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the affairs of the respective Transferor Companies have been conducted within their respective object clauses and they have not been conducted in any manner prejudicial to the interest of their members or public interest, hence the petitioner transferor companies may be dissolved without following the process of winding up. However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records and not to dispose of the same without prior

permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Companies and not to dispose of the same without prior permission of the Central Govt. as required under section 239 of the Companies Act, 2013. It is hereby further directed that even after the scheme is sanctioned, the Transferor companies shall comply with all the applicable provisions of law and shall not be absolved from any of their statutory liability. It is also directed that after consolidation of the Authorised Capital of the Transferor Companies as envisaged in the scheme, if the Authorised Capital is required to be further increased, the same shall be done in consonance with the applicable provisions of the Companies Act, 2013.

10. Since there are no adverse observations from the aforesaid authorities, the petitioners have chosen not to file any reply. No representation has been received from any other Regulatory Authority.

11. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificate of Chartered Accountant dated 29th March 2017, confirming that the accounting treatment envisaged under the said scheme of Arrangement is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of



the Companies Act, 2013. The same has been placed on record as Annexure-‘K’ to the present petition.

12. The petitioner companies filed IA No.82 of 2017 seeking amendment of the proposed Composite Scheme of Arrangement in terms of clause Nos.5, 11 and 23 as Part C of Exhibit “D” and to permit to replace the Composite Scheme of Arrangement with modified Composite Scheme of Arrangement in terms of Exhibit “F”.

13. It is stated in the application that equity shareholders of the petitioner companies and preference shareholders of one of the petitioner companies gave written approval for the modified Scheme. Considering the written approval of the equity shareholders of the petitioner companies and preference shareholders of one of the petitioner companies, this Tribunal is of the view that there is no need to hold meeting of shareholders to consider the proposed modification of the Scheme, more so in view of the fact that the Honourable High Court dispensed with the meeting of shareholders in Company Applications Nos.526 to 529 of 2016.

14. During the pendency of the Interlocutory Application, the petitioner companies filed additional affidavit stating that there are no secured and unsecured creditors in all the companies.



Therefore, there is no need to seek approval of secured and unsecured creditors for the modified Composite Scheme of Arrangement. In that view of the matter, IA No.82 is allowed permitting the petitioners to amend the Scheme as prayed for in the application.

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 all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The proposed modifications are required to be granted in the interest of justice. The modified Scheme appears to be genuine and bona fide and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

16. In the result, the petition, being C P (CAA) No. 35 of 2017, is hereby allowed. The Modified Scheme which is at Annexure- 'J' to the petition is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, viz. Shanker Global Private Limited, Spectrum Tubes Private Limited, Hindprakash Corporation Private Limited and Laxmi Alutrade Private Limited, their shareholders, and all concerned under the scheme. It is also declared that the Transferor Companies viz. Shanker Global Private Limited and Hindprakash Corporation Private Limited shall stand dissolved without winding up.

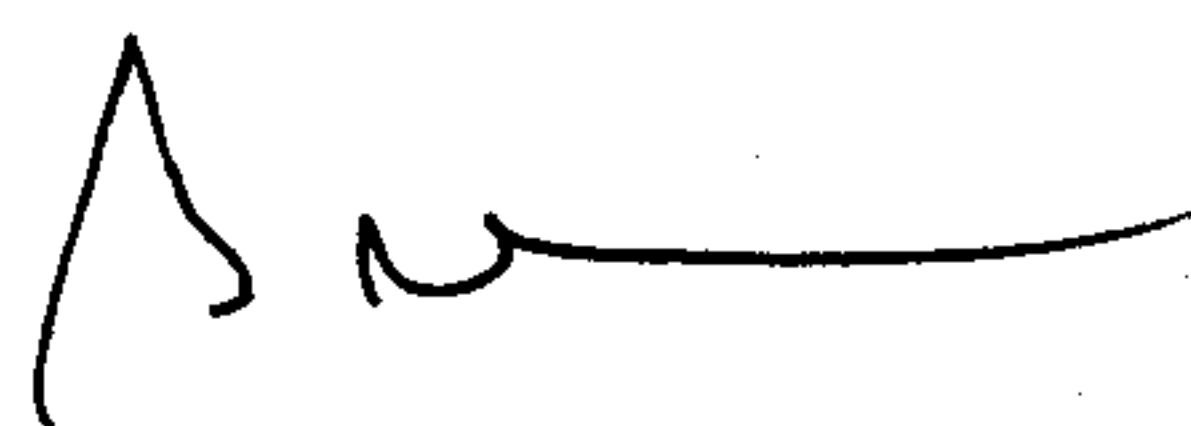


17. In view of explanation to Section 230, since the restructure of share capital is envisaged as integral part of the scheme and is to be effected in pursuance of the order of the Tribunal under this section, provisions of Section 66 are not applicable and no specific reference or order is required in this regard.

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

19. Filing and issuance of drawn up order is hereby 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 authenticated copy of this order along with the Scheme immediately.

20. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the De-merged undertaking and the undertakings of the Transferor companies as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of




adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

21. The Petitioner companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

22. 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 authenticated copy of this order along with the Scheme as expeditiously as possible.

23. The IA No. 82 of 2017 and CP (CAA) No. 35 of 2017 are disposed of accordingly.


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

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