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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CA(CAA) No. 36/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 09.05.2017**

Name of the Company: Safal Consturction Pvt. Ltd.  
Bsafal Infraheights 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>
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1.	Mr. Yuvraj Thakore for Advocate Ms. D.N. Raval	Applicant		<u>Y. Thakore.</u>
2.				

**ORDER**

Learned Advocate Ms. Dharmista Raval with Learned Advocate Mr. Yuvraj Thakore present for Applicants.

Order pronounced in open Court. Vide separate sheet.

**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 9<sup>th</sup> day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CORAM: SRI. BIKKI RAVEENDRA BABU MEMBER JUDICIAL**

**Date: 9<sup>th</sup> day of May, 2017**

**CA(CAA) No. 36/NCLT/HM/2017**

In the matter of: -

Safal Constructions Private  
Limited.

... Applicant Amalgamating Company  
And

BSafal Infraheights Private Ltd. ... Applicant Amalgamated Company

Appearance: -

Ms. Dharmishta Raval with Mr. Yuvraj Thakore, Advocates for M/s Raval  
& Raval Advocates for the Applicant Companies

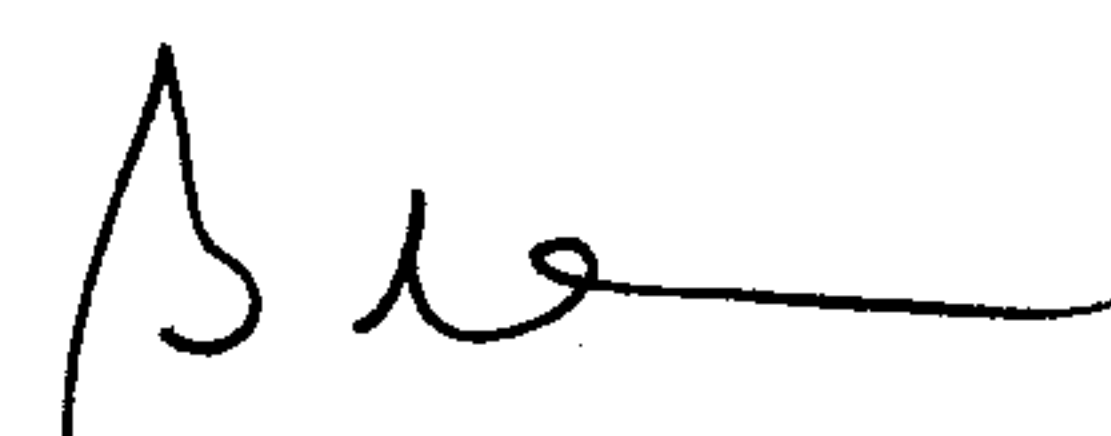
**FINAL ORDER**

(Date:09.05.2017)

1. Heard learned Advocates, Ms. Dharmishta Raval with Mr. Yuvraj Thakore, for Raval & Raval Advocates of Applicant Companies. Perused the application and the supporting affidavit of Mr. Rajeshkumar Brahambhatt, Director of the Applicant Companies, dated 14th, March, 2017 and the documents annexed thereto.

2. This is a joint application filed by Safal Constructions Pvt. Limited and BSafal Infraheights Pvt. Ltd under Section 230-232 of the Companies Act, 2016. Both these Companies are incorporated under Companies Act, 1956 with their registered offices are in Ahmedabad.

3. Safal Constructions Private Limited (hereinafter referred as the "Transferor Company") has filed this application seeking dispensation of the meeting of the equity shareholders and Preference Shareholders and seeking directions for convening the meetings of the secured creditors and unsecured creditors in respect of a scheme of arrangement between the transferor

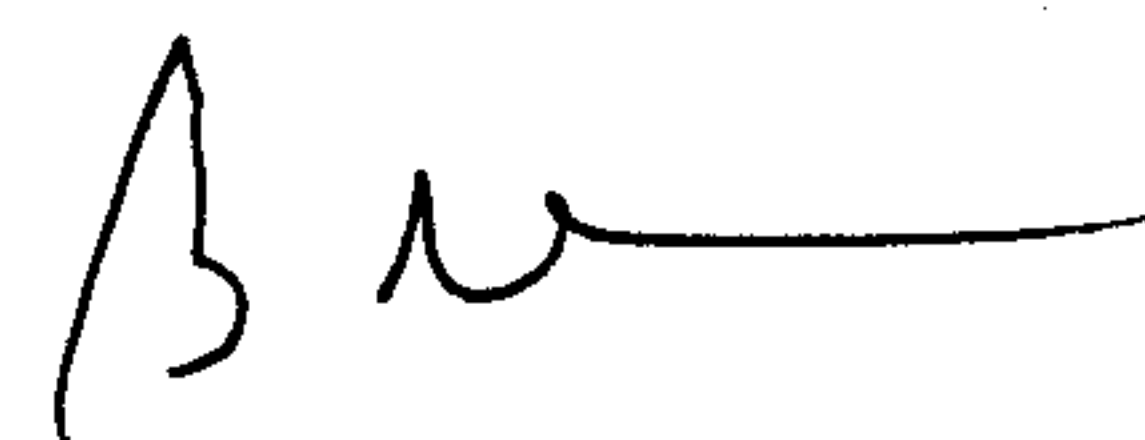


company and the BSafal Infraheights Pvt. Ltd.(hereinafter referred to as the “transferee company”) and their respective shareholders and creditors (“Scheme” for short) in the nature of the merger of the transferor company with effect from the Appointed Date with the transferee-company on the agreed terms and conditions as set out in the scheme annexed at Annexure-I in accordance with Section under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Act.

4. The Board of Directors of Safal Constructions Pvt. Ltd., in the meeting held on 22<sup>nd</sup> February, 2017, passed a resolution approving the proposed Scheme placed before the Board by the Company Secretary. The Transferor Company filed Annual Reports of the transferor company and the Transferee Company dated 31<sup>st</sup> March, 2016 as well as unaudited financial statement as on as on 15<sup>th</sup> February, 2017. The Transferor Company also filed a Certificate dated 9<sup>th</sup> March, 2017 issued by Statutory Auditor of the transferor company issued under Section 133 of the Companies Act, 2013.

5. The Transferor Company has stated that there are seven equity shareholders in the Transferor Company. The list of equity shareholders is produced at Annexure “L”. The applicant company filed original consent affidavits of all the equity shareholders vide Annexure “K”.

6. In view of the affidavits of the equity shareholders, the meeting of equity shareholder of the Transferor Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is dispensed with.

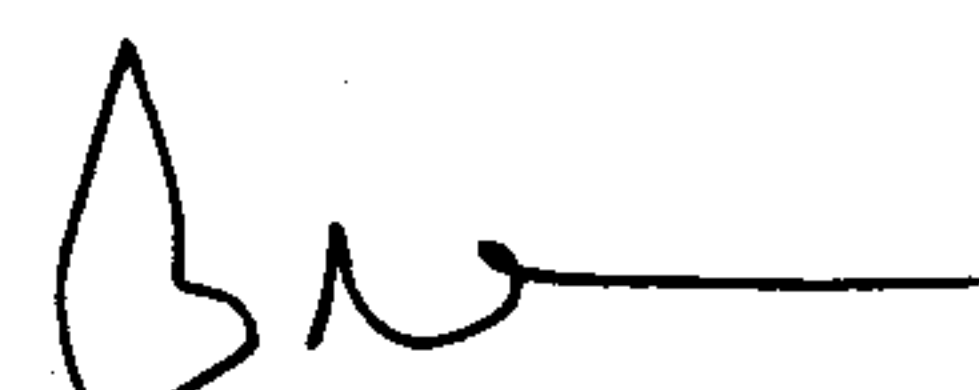


7. It is stated in the application that there is one preference share holder in the Transferor Company. The applicant company filed original consent affidavit of the sole preference shareholder vide Annexure "O". In view of the consent affidavit of the sole preference shareholder, the meeting of preference shareholders of the Transferor Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s), is dispensed with.

8. It is stated in the additional affidavit at Page 100 that there are no foreign shareholders of the transferor company and, therefore no notice is required to be issued to the Reserve Bank of India. It is also stated in the said affidavit that no notice is required to be issued to the Competition Commission of India in the facts of the present case.

9. It is stated in the application that the Transferor company is having four secured creditors of the value of Rs. 70,086,004/- , but the applicant company did not file any consent affidavits of secured creditors. Therefore, this Tribunal is of the view that the meeting of secured creditors of the applicant Transferor Company, for the purpose of considering and, if though fit, approving with or without modification(s), the scheme is necessary.

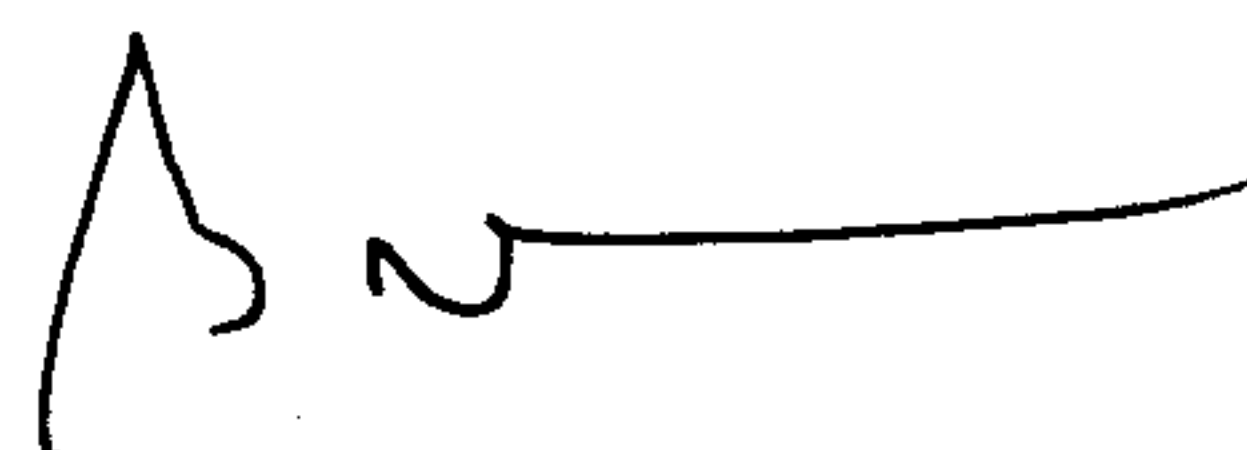
10. Coming to unsecured creditors, the applicant company is having 44 unsecured creditors of the value of Rs. 94,55,27,252/-. Consent affidavits of the unsecured creditors have not been filed by the applicant company. Therefore, this Tribunal is of the view that meeting of unsecured creditors of the applicant company, for the purpose of considering and, if though fit, approving the proposed Scheme with or without modification(s), is necessary. Hence this Tribunal passes the following order: -



- a) A meeting of the secured creditors of the Applicant Transferor Company shall be held on 15<sup>th</sup> June, 2017 at 11.00 A.M., at BSafal House, B/H Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme.
- b) A meeting of the unsecured creditors of the Applicant Transferor Company shall be held on 15<sup>th</sup> June, 2017, at 12.00 P.M. at BSafal House, B/H Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad, for the purpose of considering and, if thought fit, approving with or without modification(s) the arrangement embodied in the Scheme
- c) At least one month before 15<sup>th</sup> June, 2017, i.e. the date of the aforesaid meeting, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in English daily, Indian Express, Ahmedabad edition and a Gujarati translation thereof in Sandesh, Ahmedabad edition. The publication shall indicate the time within which copies of 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 at the registered office of the Applicant Transferor Company in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.
- d) In addition, at least one month before the date of the meetings of the secured and unsecured creditors to be held as aforesaid, a notice convening the said meetings,

indicating the day, date, place and time , as aforesaid, together with a copy of the scheme, a copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 23 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the unsecured creditors of the Applicant Company at their respective registered or last known addresses either by Registered post or Speed Post/Airmail or by Courier. The notice shall be sent to the secured and unsecured creditors of the Applicant Transferor Company with reference to the list of the persons appearing on the record of the Applicant Company as on 14<sup>th</sup> March, 2017.

- e) Mr. Ullas Shah a Chartered Accountant and, in his absence Mr. Naishal Shah, Chartered Accountant shall be the Chairman/Chairperson of the aforesaid meeting to be held on 15<sup>th</sup> June, 2017 and in respect of any adjournment thereof.
- f) Mr. Shambhubhai Jeram Bhikadi, a Practicing Company Secretary and in his absence, Miss. Jindagi Shah, Practicing Secretary is appointed as the Scrutinizer for the meeting of the unsecured creditors of the Applicant company.
- g) The Chairman or Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the Applicant Company or any agency for carrying out the aforesaid directions. The Chairman or 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 questions that may arise at the meetings or



adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meeting 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.

- h) The quorum for the meeting of the secured creditors shall be 2(two) and the quorum for the meeting of the unsecured creditors shall be 5(five) persons present in person.
- i) Voting by proxy/authorized representatives is permitted, provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the Applicant company at its registered office at BSafal House, B/H Mirch Masala Restaurant, Off S.G. Highway, Ahmedabad, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.
- j) The number and value of the secured and unsecured creditors, as the case may be, 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 Chairman of the meetings shall determine the number or value, as the case may be for purposes of the meetings.
- k) The Chairman/Chairperson to file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.
- l) It is further ordered that the Chairman or the Chairperson shall report to this Tribunal on the result of the meetings

in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days.

11. The Board of Directors of BSafal Infraheights Pvt. Ltd. (Transferee Company), in the meeting held on 24<sup>th</sup> March, 2017, passed a resolution approving the proposed Scheme placed before the Board by the Company Secretary. The Transferee Company filed Annual Reports of the Transferee Company dated 31<sup>st</sup> March, 2016 as well as unaudited financial statement as on as on 15<sup>th</sup> February, 2017. The applicant company also filed a Certificate dated 9<sup>th</sup> March, 2017 issued by Statutory Auditor of the transferee company issued under Section 133 of the Companies Act, 2013.

12. It is stated in the application that there are three equity shareholders in the transferee company. The list of equity shareholders is produced at Annexure "N". The applicant company filed original consent affidavits of all the equity shareholders vide Annexure "K".

13. In view of the consent affidavits of all the equity shareholders, the meeting of equity shareholders of the Applicant Transferee Company, for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s), is dispensed with.

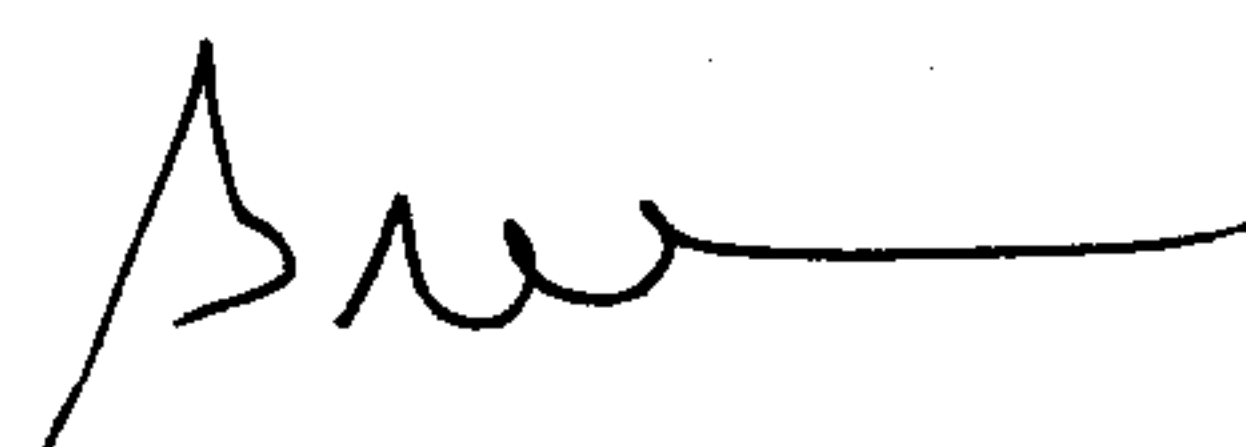
14. It is stated in the additional affidavit that there are no foreign shareholders of the Transferee Company and, therefore no notice is required to be issued to the Reserve Bank of India. It is also stated in the said affidavit that no notice is required to be issued to the Competition Commission of India in the facts of the present case.



15. It is stated in the application that the applicant Transferee Company is having no secured creditors and a certificate of Chartered Accountant to that effect is produced at Annexure – K. Therefore, this Tribunal, is of the view that meeting of secured creditors of the applicant company, or the purpose of considering and, if though fit, approving with or without modification(s), is not to be convened and held.


16. Coming to unsecured creditors, the applicant company is having one unsecured creditor of the value of Rs. 3,00,000/-. Consent affidavit of the unsecured creditor has been filed by the applicant company at Annexed -U. In view of the consent affidavit of the sole unsecured creditor, the meeting of unsecured creditors of the applicant company, for the purpose of considering and, if though fit, approving the proposed Scheme with or without modification(s) is dispensed with.

17. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules 2016, both the Applicant-Companies shall send a notice in Form No. CAA.3 along with a copy of the scheme of arrangement, the 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, Gujarat, (iii) the Income Tax authorities, and (iv) the Official Liquidator concerned (only in the case of the transferor company) stating that 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 shall be sent forthwith after note is set to the creditors of the company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required 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 subsection (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 will be deemed that they have no representation to make on the proposed arrangement.

18. This Company Application is disposed of accordingly.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Pronounced by me in open court  
on this 9<sup>th</sup> day of May 2017.