

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 8/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 23.03.2017**

Name of the Company: Kintech Synergy 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	Natasha .
2.				

ORDER

Learned Advocate Mr. Navin Pahwa with Learned Advocate Ms. Natasha Sutaria present for Applicant.

Order pronounced in open Court vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 23rd day of March, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD**

C.A. (CAA) No. 8/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 23rd March, 2017

In the matter of:

Kintech Synergy Private Limited.
(Transferee Company)

Applicant

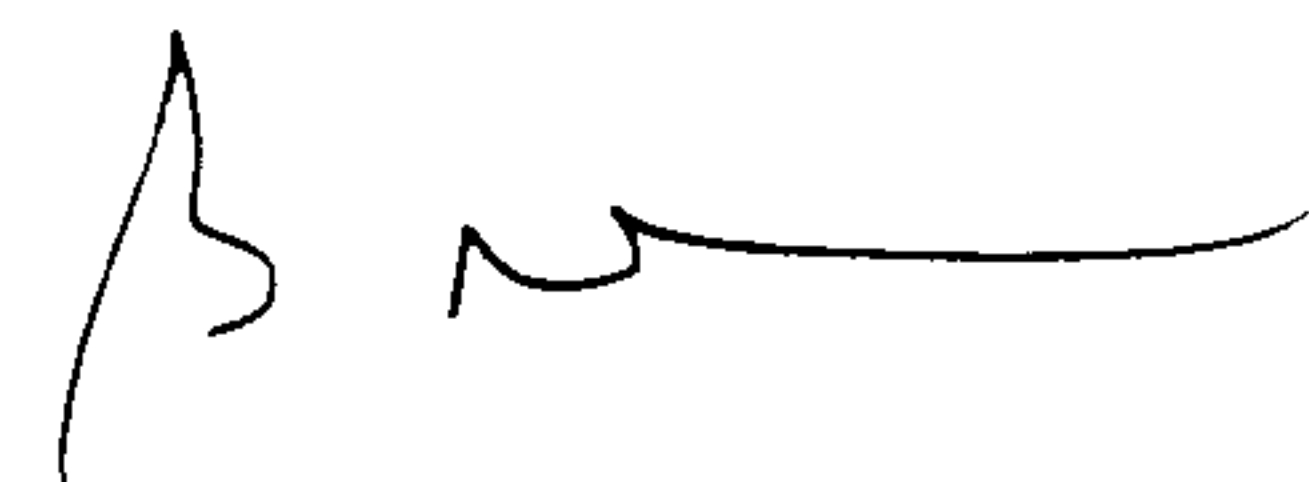
Appearance:

Learned advocate Mr. Navin Pahwa with learned advocate Ms. Natasha Sutaria for the applicants

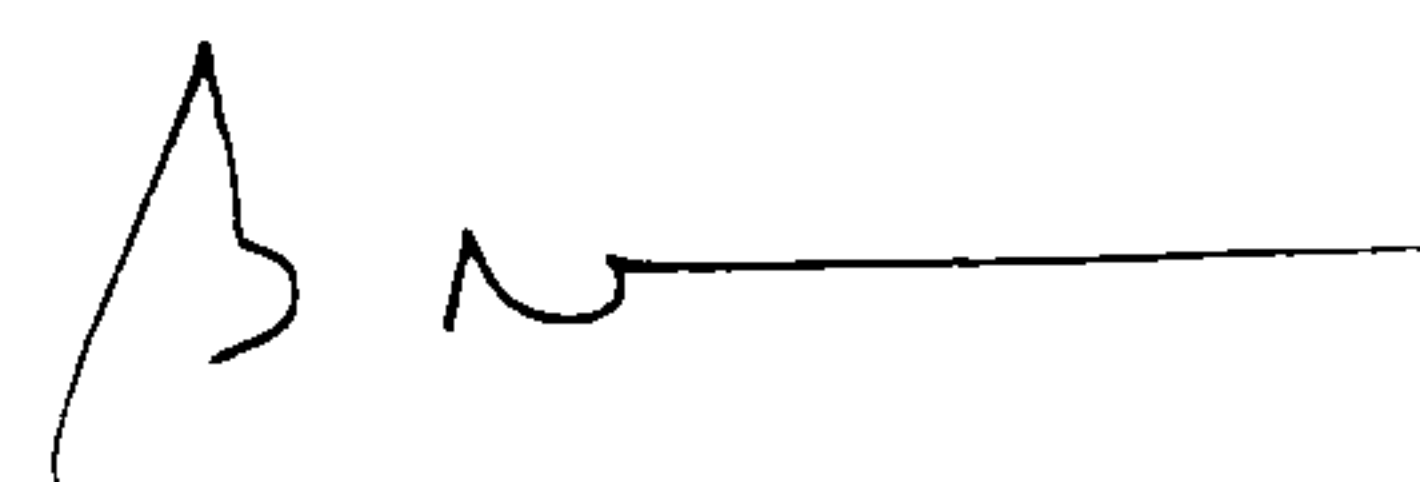
FINAL ORDER

Pronounced on 23rd March, 2017

1. M/s. Kintech Synergy P. Ltd. (transferee company) filed this application under section 230 to 232 of the Companies Act, 2013 seeking dispensation of meeting of equity shareholders of the applicant transferee company for the purpose of considering and if thought fit, approving, with or without modification, a scheme of amalgamation of Kintech Realty Private Limited. with applicant transferee company and for dispensing with the meeting of the creditors.
2. The applicant transferee company is a private limited company. Paid up equity share capital of the applicant company is Rs. 56,93,000/-. Board of directors of the applicant company approved the scheme of amalgamation as per annexure "C" 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 Annexure "F" issued under section 133 of the Companies Act, 1950 is filed.
4. It is stated in the petition that equity shareholders have given consent to the scheme of amalgamation waiving their right to convene the meeting of equity shareholders. Affidavits of the shareholders are enclosed at Annexure "D".
5. This Tribunal, following the decisions of Hon'ble High Court, in the following cases under section 391 of the Companies Act, 1956, in CA No. 4 of 2017, held that the meeting of the shareholders can be dispensed with in case of closely held companies where the shareholders have given their consent.
 - (1) **Mazda Theatres Pvt. Ltd. and Anr. Vs. New Bank of India Ltd. and Ors.** Reported in MANU/DE/0104/1974;
 - (2) **Mysore Cements Ltd., in Re,** reported in [2009]149 Comp Cas 50 (Karn);
 - (3) **Ansal Properties & Industries Ltd. and Anr. Vs. Company,** reported in MANU/DE/0118/1976; [1978]48 Comp Cas 184 (Delhi);
 - (4) **Scheme of Amalgamation of GE Capital Transportation Financial Services Limited vs. GE Capital Services India,** Reported in 2009 SCC online Del 535. (2009) 149 Comp Cas 52;
 - (5) **In Re: Sharat Hardware Industries P. Ltd.** reported in MANU/DE/0262/1976; [1978] E Com Cas 23 (Delhi)
6. In the case on hand, there are only four shareholders and all of them have given consent for the proposed scheme and for dispensing with holding of their meeting.



7. In view of the aforesaid facts, meeting of the equity shareholders of the applicant transferee company is dispensed with.
8. Coming to the meetings of the secured creditors and unsecured creditors, as can be seen from the affidavit of the authorised signatory of the applicant company, there is only one secured creditor. Certificate of the Chartered Accountants dated 28th February, 2017 show there is only one secured creditor. It is stated in the petition that the proposed scheme is not going to affect any of the creditors. It is also stated that the scheme even otherwise does not propose any compromise with the creditors. The applicant also states that, certificate of the Chartered Accountants dated 18th February, 2017 – annexure “E” shows that, pre-merger net worth of the applicant company is Rs. 26,29,83,314/- and post-merger net worth is Rs. 35,13,54,674/-. Basing on that, the learned counsel appearing for the applicant contended that meeting of the secured and unsecured creditors can be dispensed with.
9. The applicant company did not give the list of creditors and the value of creditors.
10. Even in the Chartered Accountant’s certificate dated 28th February, 2017 also it is not stated what is the value of unsecured creditors. The applicant company did not place consent letters of the unsecured creditors of the applicant company.
11. Section 230, sub section 9 of the Companies Act, 2013 gives authority to this Tribunal to dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors having at least ninety per cent, value, can give their consent for dispensing with the meeting. In this case, no such consent letters are filed. No doubt the applicant company is transferee company. But in this case not even the list of creditors of the applicant company is not filed. Therefore, this Tribunal is not inclined to dispense with the meetings of the sole secured creditor and unsecured creditors of the applicant transferee company to consider and if thought fit, approving, with or without modification, a scheme of amalgamation in annexure “C” to the application.

12. This Tribunal directs the applicant company to hold meetings of unsecured creditors and sole secured creditor. Following are the directors of this Tribunal: -

(1) The applicant company is directed to convene and hold meeting of the unsecured creditors of the applicant company as on date of filing this application. The meeting shall be convened and held on 26th April, 2017 at 03.00 p.m. at Registered Office of the company i.e. Kintech House, 8, Shivalik Plaza, Opp. AMA, IIM Road Ahmedabad – 380 015, Gujarat, for the purpose of considering and if thought fit, approving, with or without modification, a scheme of arrangement. At least one month before the date of the aforesaid meeting, an advertisement about convening of the said meeting, indicating the date, place and time as aforesaid, shall be published in "Economic Times", English Daily, Ahmedabad Edition and "Gujarati" translation thereof in "Sandesh", Ahmedabad Edition. 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 Section 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 , 71 New York Tower – 'A', Opp. Mukti Dham Derasar, Thaltej Chokdi, Thaltej, Ahmedabad 380 059.

(2) In addition, at least one month before the date of aforesaid meeting of unsecured creditors of the applicant company to be held as aforesaid, a notice convening the said meeting 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 Sections 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 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 unsecured creditors appearing on the record of the applicant demerged company as on the date of the filing of the application.

- (3) This Tribunal directs the applicant company to convene and hold meeting of the sole secured creditors of the applicant company on 26th April, 2017 at 4.00 p.m. at Registered Office of the company i.e. Kintech House, 8, Shivalik Plaza, Opp. AMA, IIM Road Ahmedabad – 380 015, Gujarat.
- (4) At least one month before the date of the aforesaid meeting, an advertisement about convening of the said meeting, indicating the date, place and time as aforesaid, shall be published in "Economic Times", English Daily, Ahmedabad Edition and "Gujarati" translation thereof in "Sandesh", Ahmedabad Edition. 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 Section 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 , 71 New York Tower – 'A', Opp. Mukti Dham Derasar, Thaltej Chokdi, Thaltej, Ahmedabad 380 059.
- (5) At least one month before the date of aforesaid meeting of secured creditor of the applicant company to be held as aforesaid, a notice convening the said meeting 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 Sections 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 the secured creditor 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 secured

creditor appearing on the record of the applicant demerged company as on the date of the filing of the application.

- (6) Mr. Jigar Shah, son of Shri Jasvantlal Shah, Director and in his absence Mr. Ambalal C. Patel, son of Chimanlal Patel shall be the Chairman of the aforesaid meetings to be held on 26th April, 2017 at 04.00 p.m. and in respect of any adjournment or adjournments thereof.
- (7) Mr. Rajesh Parekh a practising Company Secretary, is appointed as scrutinizer for the meetings of the unsecured creditors and sole secured creditor of the applicant company.
- (8) The Chairman appointed for the aforesaid meetings shall issue advertisements and send out notices of the meeting referred to above. The Chairman is free to avail the services of the applicant company or any agency for carrying out the aforesaid directions. The Chairman shall have all powers under the Articles of Association of the applicant company and also under the Rules in relation to the conduct of meeting, including for deciding any procedural question that may arise at the meeting or adjournment thereof proposed at the said meeting, amendment(s) to the aforesaid scheme or resolutions, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting of the unsecured creditors by ballot or polling paper at the venue of the meeting of the unsecured creditors.
- (9) The quorum for the meeting of the unsecured creditors of the applicant company shall be 15 (fifteen) persons. The quorum for the meeting of secured creditor is one.
- (10) Voting by proxy or by authorised representative is permitted provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the applicant company at its registered office Kintech House, 8, Shivalik Plaza, Opp. AMA, IIM Road Ahmedabad – 380 015, Gujarat.

- (11) The Chairman to file an affidavit not less than 7 (seven) days before the date fixed for holding of the meetings of the unsecured creditors and secured creditor of the applicant company 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 Companies (CAA) Rules, 2016.
- (12) It is further ordered that the Chairman 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 Form No. CAA.4 within seven days after conclusion of the Meeting.
- (13) In compliance of sub-section (5) of Section 230 and Rule 18 of the Companies (CAA) Rules, 2016, the applicant company shall send a notice of meeting 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 arrangement, the explanatory statement and the disclosures mentioned under Rule 6 to (a) the Central Government through the Regional Director, North Western Region, (b) the Registrar of Companies, Gujarat (c) the Income-tax authorities and (d) the Reserve Bank of India.
- (14) The applicant company shall file petition for sanction of the scheme within 7 (seven) days of filing of the report of the Chairman of meeting before the Tribunal.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this 23rd day of March, 2017.