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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 5/NCLT/AHM/2017 with
High Court of Gujarat CA no. 515/2017**

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: Sintex BAPL 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.	Sandeep Singhi	Advocate	Petitioner	}
2.	Pranjal Buch for Singhi & Co.	"	"	

ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjal Buch present for petitioner.

Common 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
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 23rd day of March, 2017

C.P. No.03/CAA/NCLT/AHM/2017

With

C.P. No.04/CAA/NCLT/AHM/2017

With

C.P. No.05/CAA/NCLT/AHM/2017

With

C.P. No.06/CAA/NCLT/AHM/2017

In the matter of: -

1. Sintex Industries Limited,
An existing company under the
Provisions of the Companies Act,
1956 and having its registered
Office at Kalol – 382 721,
Gujarat. ... Petitioner company in
C.P.(CAA) No.3 of 2017
2. Sintex Plastics Technology Limited,
A company incorporated under the
Provisions of the Companies Act, 1956
And having its registered office at
Abhijit-I, 7th Floor, Mithakhali Six
Roads, Ellisbridge,
Ahmedabad – 380006, Gujarat. ... Petitioner company in
C.P.(CAA) No.4 of 2017
3. Sintex-BAPL Limited,
A company incorporated under the
provisions of the Companies Act,
1956 and having its registered
Office at ABhijit-I, 7th Floor,
Mithakhali Six Roads, Ellisbridge,
Ahmedabad – 380006, Gujarat. ... Petitioner company in
C.P.(CAA) No.5 of 2017
4. Sintex Infra Projects Limited,
A company incorporated under
the provisions of the Companies

Act, 1956 and having its registered
Office at Abhijit-I, 7th Floor,
Mithakhali Six Roads, Ellisbridge,
Ahmedabad – 380006, Gujarat. ...

Petitioner company in
C.P.(CAA) No.6 of 2017

Appearance: -

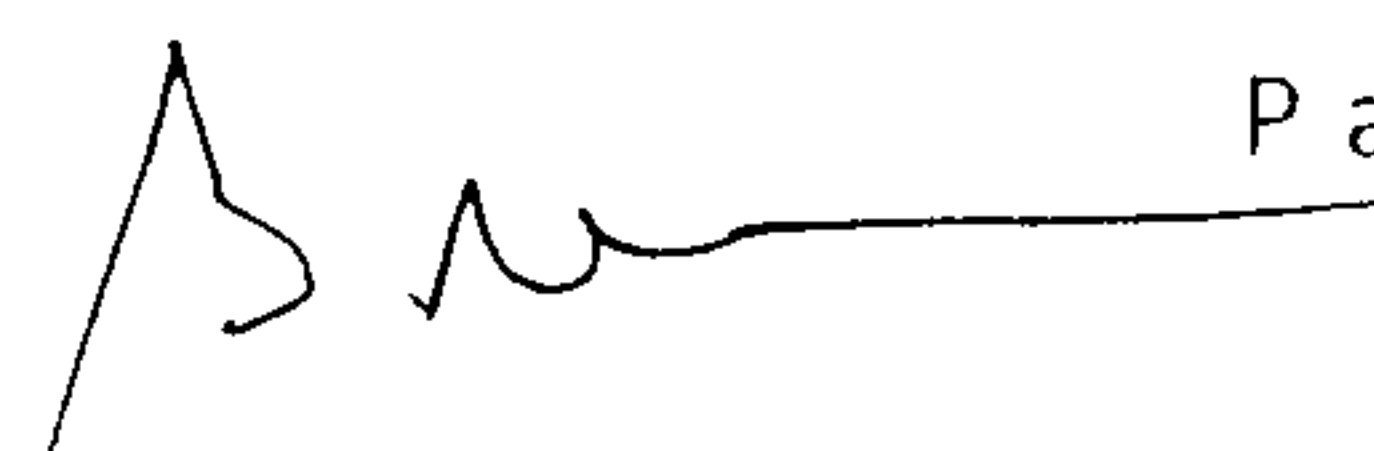
1. Mr. Sandeep Singhi and Mr. Pranjil Buch,
Advocates, for M/s Singhi & Co.,
Advocates, for the Petitioner-companies.
2. Mr. Pathik M. Acharya, Advocate, for the Official Liquidator,
Gujarat High Court, in all the matters.

COMMON FINAL ORDER

(Date:23.03.2017)

1. These petitions have been filed by four petitioner-companies for sanctioning of a Composite Scheme of Arrangement among Sintex Industries Limited and Sintex Plastics Technology Limited and Sintex-BAPL Limited and Sintex Infra Projects Limited and their respective shareholders and creditors [“Scheme” for short].

2. The petitioner of C.P.(CAA) No. 3 of 2017, i.e. Sintex Industries Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.513 of 2016, praying for requisite directions for holding separate meetings of the equity shareholders, secured creditors (including debenture holders) and unsecured creditors of the said company and, if thought fit, approving with or without modification(s), the arrangement embodied in the Composite Scheme of Arrangement among Sintex Industries Limited, Sintex Plastics Technology Limited, Sintex-BAPL Limited and Sintex Infra Projects Limited and their respective shareholders and creditors and for issuing appropriate directions incidental for holding of such meetings. The said company further sought directions of the Honourable High Court for seeking dispensation from following separate procedure for reductions of the Capital Redemption Reserve account and the Securities Premium Account and also prayed for a declaration to the effect that no separate meetings of the creditors, whether secured or unsecured, of the



petitioner-company are required to be called for reductions of the Capital Redemption Reserve Account and the Securities Premium Account. The Honourable High Court, vide its order dated 8th December, 2016, inter alia, directed convening and holding of the meetings of the equity shareholders, secured creditors (including debenture holders) and unsecured creditors of the said company. The Honourable High Court, vide its aforesaid order dated 8th December, 2016, appointed Mr. Dinesh B. Patel, Chairman of the petitioner-company and, in his absence, Mr. Arun P. Patel, Vice-Chairman of the petitioner-company and, in his absence, Mr. Amit D. Patel, Managing Director (Group) of the petitioner-company as the Chairman of the meetings that were to be held on 17th January, 2017. The Honourable High Court also dispensed with settling and/or approval of the advertisement, the form of Notice and the statement to accompany the Notice by the Registrar of the High Court. The Honourable High Court further held that no separate procedure is required to be followed for reductions of the Capital Redemption Reserve Account and the Securities Premium Account as the same is part and parcel of the present Scheme and that the meeting of the Creditors for considering the aforesaid Scheme which includes reductions of the Capital Redemption Reserve Account and the Securities Premium Account is not required to be called for as reductions of the Capital Redemption Reserve Account and the Securities Premium Account do not in any manner affect the interests of the creditors, whether secured or unsecured, of the petitioner-company.

3. The petitioner of C.P.(CAA) No. 4 of 2017, i.e. Sintex Plastics Technology Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.514 of 2016, for dispensing with the convening and holding of the meetings of the equity shareholders and unsecured creditors of the said company. The petitioner-company also sought directions of the Honourable High Court for seeking dispensation from following separate

procedure for reduction of the paid up equity share capital and sub-division of equity shares. The petitioner-company further sought a declaration from the Honourable High Court to the effect that no separate meeting of the creditors of the petitioner-company is required to be called for reduction of the paid up equity share capital and sub-division of equity shares. The Honourable High Court, vide its order dated 8th December, 2016, inter alia, dispensed with the convening and holding of the meetings of equity shareholders and of the petitioner-company in view of the consent affidavits to the Scheme given by the equity shareholders. The Honourable High Court, vide its aforesaid order dated 8th December, 2016, also dispensed with the meeting of unsecured creditors of the petitioner-company. The Honourable High Court also dispensed with advertisement to be given in newspapers and publication of notice in the Government Gazette. The Honourable High Court further held that no separate procedure is required to be followed for reduction of the paid up equity shares as the same is part and parcel of the present Scheme and that the meeting of the creditors for considering the aforesaid Scheme which includes reduction of the paid up equity share capital and sub-division of equity shares is not required to be called for as reduction of the paid up equity share capital and sub-division of equity shares do not in any manner affect the interests of the creditors of the petitioner-company as the reduction of paid up equity share capital does not involve either diminution of liability in respect of unpaid share capital or payment to the shareholders of paid-up share capital.

4. The petitioner of C.P.(CAA) No. 5 of 2017, i.e. Sintex-BAPL Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.515 of 2016, for dispensing with the convening and holding of the meetings of the equity shareholders, sole preference shareholder, secured creditors and unsecured creditors of the said company. The Honourable High Court, vide its order dated 8th December, 2016, inter alia, dispensed with the convening and holding of the meetings of equity

shareholders and sole preference shareholder of the petitioner-company in view of the consent affidavits to the Scheme given by them. The Honourable High Court, vide its aforesaid order dated 8th December, 2016, also dispensed with the meetings of secured and unsecured creditors of the petitioner-company. The Honourable High Court also dispensed with advertisement to be given in newspapers and publication of notice in the Government Gazette.

5. The petitioner of C.P.(CAA) No. 6 of 2017, i.e. Sintex Infra Projects Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.516 of 2016, for dispensing with the convening and holding of the meetings of the equity shareholders, secured creditors and unsecured creditors of the said company. The Honourable High Court, vide its order dated 8th December, 2016, inter alia, dispensed with the convening and holding of the meeting of equity shareholders of the petitioner-company in view of the consent affidavits to the Scheme given by them. The Honourable High Court, vide its aforesaid order dated 8th December, 2016, also dispensed with the meetings of secured and unsecured creditors of the petitioner-company. The Honourable High Court also dispensed with advertisement to be given in newspapers and publication of notice in the Government Gazette.

6. Pursuant to the order passed by the Honourable High Court on 8th December, 2016, notices of meetings were sent individually to the equity shareholders, secured creditors (including debenture holders) and unsecured creditors of Sintex Industries Limited, i.e. petitioner of C.P. (CAA) No.3/NCLT/AHM/2017 together with a copy of the Scheme, a copy of the Explanatory Statement required to be furnished under Section 393 of the Companies Act, 1956 read with Section 102 of the Companies Act, 2013, a copy of fairness opinion dated 29.09.2016 issued by Investec Capital Services (India) Pvt. Ltd. to the petitioner-company, Observation letter dated 02.12.2016 issued by BSE Limited, Observation letter dated 05.12.2016 issued by National Stock Exchange of India Limited and the prescribed Form

of Proxy. As directed by the Honourable High Court vide its order dated 8th December, 2016, notice of meetings was also advertised in English daily "Indian Express", all editions and Gujarati daily "Sandesh", Ahmedabad edition on 14th December, 2016. The petitioner-companies also served notice upon the Registrar of Companies, Ahmedabad, Official Liquidator, Central Government through the Regional Director, Reserve Bank of India, Deputy Commissioner of Income Tax, National Stock Exchange of India Limited, BSE Limited and Securities and Exchange Board of India on 16th December, 2016. An affidavit to that effect dated 6th January, 2017 has been filed by one Mr. Dinesh B. Patel.

7. In reply to the notices issued by the petitioner-companies, representations of Official Liquidator, Regional Director and Income Tax Department have been filed in this Tribunal.

8. The Chairman of the meetings filed his report dated 21st January, 2017 before this Tribunal. A perusal of the said report shows that in the meeting of equity shareholders, the Scheme was approved. The Chairman further stated in his report that the secured creditors of the petitioner-company also approved and agreed to the resolution approving the Scheme unanimously. The report of the Chairman further reads that the unsecured creditors of the petitioner-company have approved and agreed to the Scheme unanimously. The Consolidated Scrutinizers report also supports result of meetings given by the Chairman.

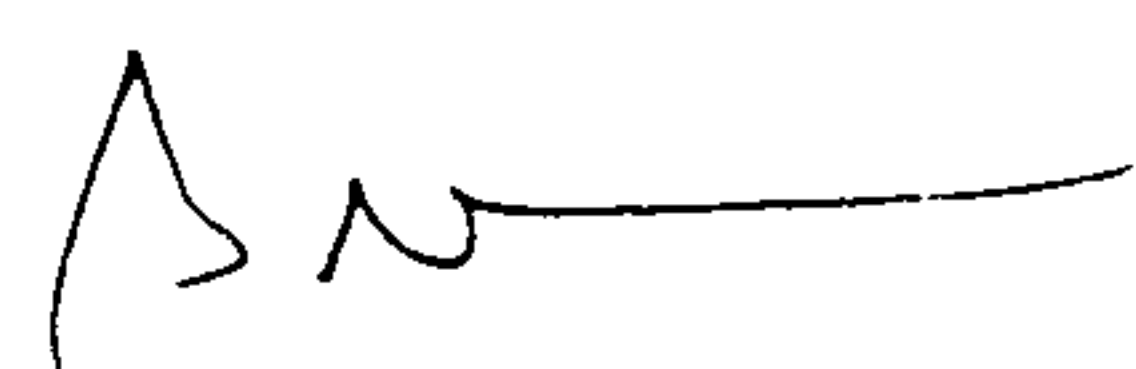
9. The petitioner-companies, thereafter, on 25th January, 2017, filed the present petitions before this Tribunal seeking sanction of the Scheme. This Tribunal by order dated 8th February, 2017, while admitting the aforesaid Company Petitions, ordered notice of hearing shall be advertised in English daily "Indian Express", All India editions and Gujarati daily "Sandesh", Ahmedabad edition in respect of C.P. (CAA) No.3/NCLT/AHM/2017 and in English daily "India

Express”, Ahmedabad edition and in Gujarati daily “Sandesh”, Ahmedabad edition in respect of C.P. (CAA) No.3 to 6 of 2017 not less than 10 days before the date fixed for hearing calling for their objections, if any, on or before the date of hearing. This Tribunal also ordered notice to the following statutory authorities intimating the date of hearing: -

- (A) Central Government through Regional Director, Gujarat.
- (B) Income Tax Authority.
- (C) Official Liquidator.

10. This Tribunal further ordered to issue notice in form No.CAA3 accompanied with the scheme of arrangement, copies of petitions with annexures along with a copy of order dated 08.02.2017 to Registrar of Companies, Gujarat, Reserve Bank of India, Bombay Stock Exchange, National Stock Exchange and Securities and Exchange Board of India asking them to file their representations, if any, before this Tribunal within 30 days from the date of receipt of notice and, in case no representation is received by this Tribunal within the said period, it shall be presumed that the above said authorities have no representation to make on the proposed scheme of arrangement.

11. Before the hearing date, representation of Regional Director, reports of Official Liquidator and Registrar of Companies and communication from Income Tax Department have been received by this Tribunal. No reply has been received by this Tribunal from Reserve Bank of India, SEBI, BSE and NSE. No objections were filed before this Tribunal by anyone on the date of hearing or before the date of hearing. The petitioner-companies filed replies to the representation of Regional Director and the report of the Official Liquidator. The petitioner-companies also filed further affidavit on 9th March, 2017 together with a certificate of Chartered Accountant indicating that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards.



12. Heard Mr. Sandeep Singhi with Mr. Pranjlal Buch, Advocates for M/s Singhi & Co., Advocates, for the petitioner-companies and Mr. Pathik M. Acharya, Advocate, appearing for the Official Liquidator.

13. Perused the Scheme, representation, reports and communication of the statutory authorities received by this Tribunal and the replies filed by the petitioner-companies. The Scheme contemplates demerger of Custom Moulding business being carried out by Sintex Industries Limited and merging it to Sintex-BAPL Limited. The Scheme also contemplates demerging of Prefab business being carried out by Sintex Industries Limited and merging it to Sintex Infra Projects Limited. Sintex Plastics Technology Limited is the holding company of Sintex-BAPL Limited and Sytex Infra Projects Limited. The Scheme also proposes sub-division of equity share capital of Sintex Plastics Technology Limited and issuance of equity shares by Sintex Plastics Technology Limited to the shareholders of Sintex Industries Limited. The Scheme discloses reduction of pre-paid equity share capital of Sintex Plastics Technology Limited pursuant to the cancellation of equity shares held by Sintex Industries Limited in Sintex Plastics Technology Limited. There is also reduction of Capital Redemption Reserve Account and Securities Premium Account of Sintex Industries Limited. The Scheme also proposes change in the name of Sintex Infra Projects Limited.

14. The rationale for the Scheme is that the business activities carried on by Sintex-BAPL are similar to the Custom Moulding business being carried out by Sintex Industries Limited. Further, the business activities carried out by Sintex Infra Projectss Limited are similar to the Prefab business being carried out Sintex Industries Limited. By this Scheme, Sintex group is desirous of segregating the plastic division and textile division of Sintex Industries Limited by separating the Custom Moulding Undertaking and the Prefab

Undertaking of the Plastic Division of Sintex Industries and transfer of the same to Sintex-BAPL and Sintex Infra, respectively.

15. The Appointed Date, as per the Scheme, is 1st April, 2016.

16. It is stated in the petition that SEBI, by its letter dated 2.12.2016, addressed a communication in respect of the Scheme to BSE and NSE. BSE and NSE by their letters dated 2.12.2016 and 5.12.2016, respectively, gave no adverse observations/no objection to enable Sintex Industries Limited to file the Scheme with this Tribunal for sanction.

17. It is stated in the petition that no investigation has been instituted or is pending in relation to these companies under Chapter XIV of the Act or under the corresponding provisions of the Companies Act, 1956.

18. It is also stated in the petition that no winding up proceedings have been filed or pending against the petitioner-companies. The petitioner-companies also filed certificate dated 29.09.2016 issued by Statutory Auditor to the effect that the accounting treatment as proposed in the scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Act vide Annexure-X.

19. The Regional Director, in paragraph 2(e) of the common representation dated 9th January, 2017 mentioned that Sintex Industries Limited shall duly comply with various provisions of the Circulars of SEBI, namely, SEBI circulars No.CIR/CFD/DIL/5/2013 dated 04.02.2013, No.CIR/CFD/DIL/8/2013 dated 21.05.2013 and No.CIR/CFD/CMD/16/2015 dated 30.11.2015.

20. In paragraph 3 of the reply filed by Sintex Industries Limited, it is stated that no adverse observation/no objection letters dated 2.12.2016 and 5.12.2016 were received from BSE and NSE, respectively. It is further stated in the said reply that the petitioner-

company has complied with the requirements of SEBI Circular dated 30.11.2015 and shall continue to abide by the said Circular dated 30.11.2015 upon the Scheme being sanctioned by this Tribunal. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(e) of the common representation stand satisfied.

21. The Regional Director, in paragraph 2(f) of the common representation stated that he is not aware as to whether demerged company has complied with the provisions of FEMA and RBI guidelines or not and requested this Tribunal to direct the demerged company to ensure about the compliance of FEMA and RBI guidelines in the matter, from time to time.

22. In paragraph 4 of the reply to the common representation of the Regional Director, it is stated that the petitioner-company shall obtain necessary approval from RBI, as may be required under law and as envisaged in the Scheme. But the petitioner-company is not required to obtain any prior permission of FEMA or RBI for allotting equity shares in terms of the Scheme to its foreign shareholders. In this connection, it is also necessary to refer to the report of the Registrar of Companies dated 6th January, 2017. In the said report, the Registrar of Companies stated as follows: -

“All the companies are not registered as NBFC. Therefore, RB permission is not required.”

Moreover, the petitioner-companies, as directed by this Tribunal, sent a notice to Reserve Bank of India under Section 230(5) of the Companies Act, 2013, but no representation has been received from RBI. Therefore, it is deemed that Reserve Bank of India has nothing to say in the matter. Therefore, taking into consideration the representation of the Regional Director, the reply filed by the petitioner-companies and the report of the

Registrar of Companies, the observations of the Regional Director in paragraph 2(f) of the common representation stand satisfied.

23. The Regional Director, in paragraph 2(g) of the common representation stated that the petitioner-companies have not clearly disclosed the complete list of assets and liabilities. In the reply, the petitioner-company stated that there is no requirement to attach the list of assets and liabilities of either the Custom Moulding Undertaking or the Prefab Undertaking along with the Scheme. It is also stated in the reply that the petitioner-company had kept the statement showing assets and liabilities of the Custom Moulding Undertaking and Prefab Undertaking of the petitioner-company as on 31.3.2016 proposed to be demerged and transferred to Sintex-BAPL Limited and Sintex Infra Projects Limited, respectively, open for inspection by the shareholders and creditors of the petitioner-company. A copy of the said statement is also annexed to the reply at Annexure-A. Therefore, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(g) of the common representation stand satisfied.

24. In paragraph 2(h) of the common representation of the Regional Director, it is stated that the Resulting Company No.2 shall have to comply with the relevant provisions of the Companies Act for change of its name, besides payment of stamp duty payable as per the rules for transfer of assets. It is also stated in the common representation that the Scheme has proposed that the name of the petitioner Resulting Company No.2, namely, Sintex Infra Projects Limited, shall be changed to M/s. Sintex Prefab and Infra Limited, subject to the approval of the Registrar of Companies. But, in the Scheme, it is not stated about the payment of necessary fees in compliance of Section 13 of the Companies Act. In the reply, it is stated that the necessary fees, as required by law, would be paid by Sintex Infra Projects Limited, in respect of change of name, upon the Scheme being

sanctioned by this Tribunal. It is also stated in the reply that the payment of stamp duty for transfer of Custom Moulding Undertaking and Prefab Undertaking would arise only upon the sanctioning of the Scheme by this Tribunal and that the concerned petitioner-companies shall make necessary application to the appropriate authority for payment of stamp duty, if so required. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(h) of the common representation stand satisfied.

25. The Regional Director, in paragraph 2(i) of his common representation referred to contingent liabilities and requested this Tribunal to direct the petitioner-companies to place on record all the relevant facts in the matter and to satisfy the contingent liabilities, in case they get invoked, will not affect the financial position of the companies adversely so as to impact the liquidity of the companies and their continuance/going concern concept. In the reply, it is stated that the excess of assets over liabilities of Sintex-BAPL Limited and Sintex Infra Projects Limited, as on 31.12.2016, is approximately Rs.155 crores and Rs.380 crores, respectively. It is also stated that the contingent liabilities would not affect the financial position of the aforesaid companies. The petitioner-companies also filed unaudited financial statements of Sintex Plastics Technology Limited, Sintex-BAPL Limited and Sintex Infra Projects Limited. In light of the aforesaid, this Tribunal is of the view that the observations of the Regional Director in paragraph 2(i) of the common representation stand satisfied.

26. The Regional Director, in paragraph 2(j) of the common representation, stated that no reply has been received from the Income Tax Department by his office. In fact, the Income Tax Department sent a letter dated 18th January, 2017 to this Tribunal stating that there was no demand outstanding as on the said date and, hence, no specific comments pertaining to the

composite scheme in the matters were being offered. The same has also been reiterated by the Income Tax Department in the letter dated 27th February, 2017. Moreover, it is stated in paragraph 8 of the reply that the Scheme as proposed by the petitioner-companies is in compliance with Section 12(19AA) of the Income Tax Act, 1961.

27. The Official Liquidator filed his report dated 13.01.2017 before this Tribunal. The Official Liquidator, in his report, stated that the petitioner-companies have submitted certificate from the Auditor stating that the accounting treatment proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act. The Official Liquidator also stated in the report that the petitioner-companies to ensure statutory compliance of all applicable laws. The Official Liquidator also stated that the petitioner-companies shall preserve their books of accounts, papers and records and shall not dispose them of without prior permission of the Central Government. In the reply to the representation of the Official Liquidator, the petitioner-companies have stated that the provisions of Section 239 of the Companies Act are not applicable to the facts of the present case. It is further stated in the said reply that the petitioner-companies would preserve their books of accounts, papers and records. In light of the aforesaid, the observations made by the Official Liquidator in his report stand answered.

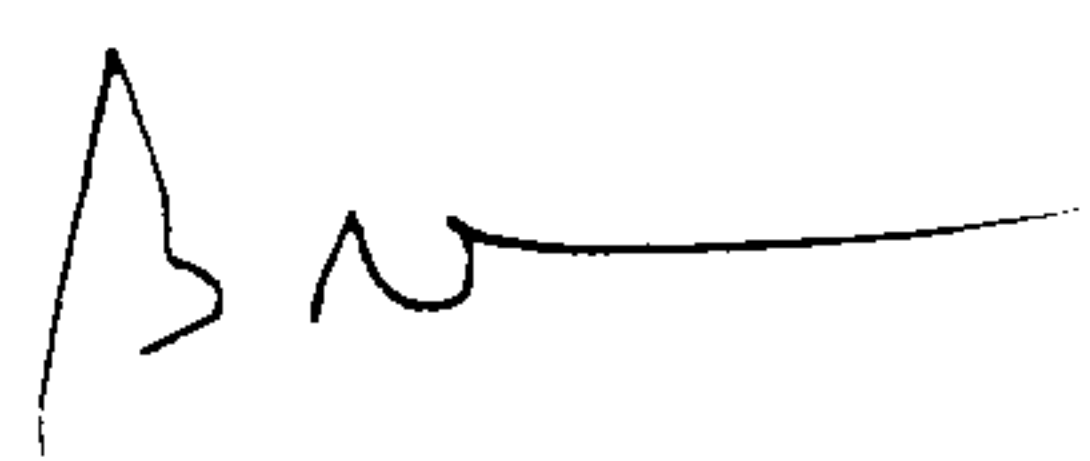
28. The proposed Scheme also provides safeguards for the employees of the demerged Undertakings and for the liabilities of the demerged Undertakings. The financial statements of the Companies also show that they are all viable companies.

29. The petitioner-companies have fully complied with Section 230 and 232 of the Companies Act, 2013. The Honourable High Court in its order dated 8th December, 2016 passed in Company Application

No.513 of 2016 clearly held that no separate procedure is required to be followed for reductions of the Capital Redemption Reserve Account and the Securities Premium Account as the same is part and parcel of the present Scheme and that the meeting of the Creditors for considering the aforesaid Scheme which includes reductions of the Capital Redemption Reserve Account and the Securities Premium Account is not required to be called for as reductions of the Capital Redemption Reserve Account and the Securities Premium Account do not in any manner affect the interests of the creditors, whether secured or unsecured, of the petitioner-company. Likewise, the Honourable High Court in its order dated 8th December, 2016, passed in Company Application No.514 of 2016 clearly held that no separate procedure is required to be followed for reduction of the paid up equity shares as the same is part and parcel of the present Scheme and that the meeting of the creditors for considering the aforesaid Scheme which includes reduction of the paid up equity share capital and sub-division of equity shares is not required to be called for as reduction of the paid up equity share capital and sub-division of equity shares do not in any manner affect the interests of the creditors of the petitioner-company as the reduction of paid up equity share capital does not involve either diminution of liability in respect of unpaid share capital or payment to the shareholders of paid-up share capital.

30. 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 complied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors and is not against the interest of the public.

31. In light of the above discussion, prayer (A) made in all the four Company Petitions, being CP(CAA) Nos.3 to 6 of 2017 is hereby granted. The Composite Scheme of Arrangement vide Annexure "M" among Sintex Industries Limited, Sintex Plastics Technology Limited,




Sintex-BAPL Limited and Sintex Infra Projects Limited is, accordingly, sanctioned.

32. 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.

33. The fees of the Official Liquidator are quantified at Rs. 10,000/- in each of the petitions. The said fees shall be paid by the respective petitioner-companies.

34. These Company Petitions are disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

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

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