

29
**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 91/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 21.08.2017**

Name of the Company: Idea Cellular Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

| | | | |
|-------------------------------------|---------------|----------------|-----------------|
| 1. Sandeep Singhi, Pranjal Buch, | Advocate " | Applicant " | } <i>Jrista</i> |
| 2. Parini Shah for Singhi & Co. | " | " | |

ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjal Buch with Learned Advocate Ms. Parini Shah i/b Singhi & Co. present for Applicant.

Order pronounced in open Court. Vide separate sheet.

B. Raveendra Babu 21.8.17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 21st day of August, 2017.

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

CA(CAA) No.91/NCLT/AHM/2017

In the matter of :-

Idea Cellular Limited,
a company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at
Suman Tower, Plot No. 18, Sector-11,
Gandhinagar- 382 011, Gujarat,
India.

... Applicant
(Transferee Company)

Order delivered on 21st August, 2017

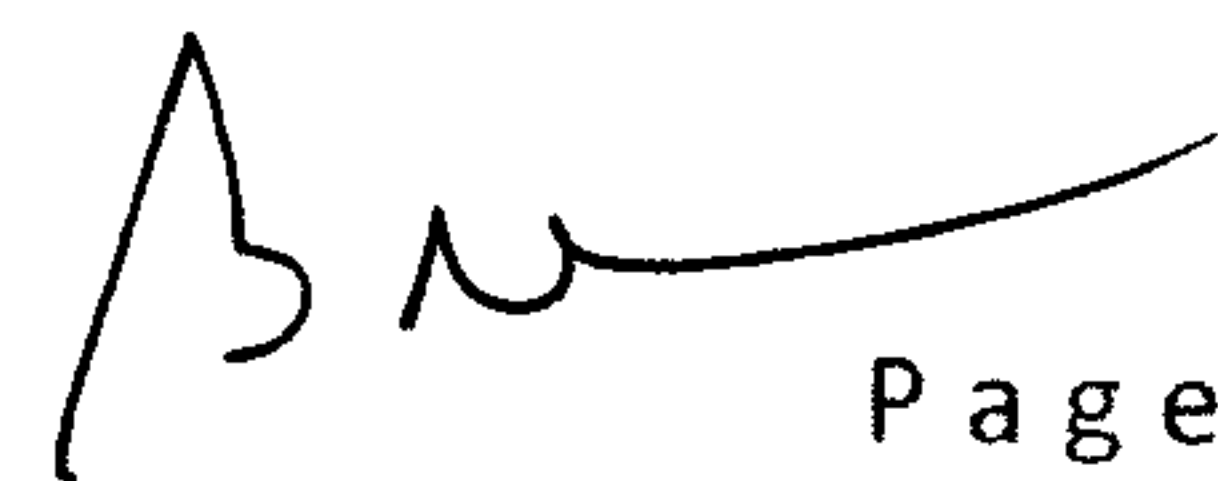
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Mihir Joshi, Senior Advocate with Mr. Sandeep Singhi and Mr. Pranjal Buch, advocates, for M/s. Singhi & Co., Advocates, for the Applicant.

ORDER

1. Idea Cellular Limited (hereinafter referred to as the "Transferee Company") is a public company limited by shares.
2. Vodafone Mobile Service Limited is an unlisted company. Vodafone Mobile Services Limited (hereinafter referred to as the "Transferor Company 1") is a wholly-owned subsidiary of Vodafone India Limited (hereinafter referred to as the "Transferor Company 2").
3. The Transferor Company 2 is an unlisted company. The Transferor Company 2 is a wholly-owned indirect subsidiary of



Vodafone Group Plc, a company incorporated under the laws of England.

4. Heard learned Senior Advocate Mr. Mihir Joshi with learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s. Singhi & Co., Advocates for the Applicant Company. Perused the application and the supporting affidavit of Mr. Vineet Choraria, Authorised Signatory of the Applicant Company dated 6th day of August 2017 and the documents annexed thereto.

5. The Transferee Company has filed this application seeking directions for convening the meetings of its Equity Shareholders, Secured Creditors (including secured debentureholders) and Unsecured Creditors (including unsecured debentureholders) in respect of the arrangement embodied in the Composite Scheme of Amalgamation and Arrangement among the Transferor Company 1 and the Transferor Company 2 and the Transferee Company and their respective shareholders and creditors ("Scheme" for short) in the nature of amalgamation of the Transferor Company 1 and the Transferor Company 2 with the Transferee Company, pursuant to the provisions of Sections 230 - 232 of the Companies Act, 2013 (hereinafter referred to as the "Act") and other applicable provisions of the Act.

6. The Transferee Company obtained Valuation Report, Fairness Opinion, report of the Audit Committee vide Annexures K, L and M, respectively.

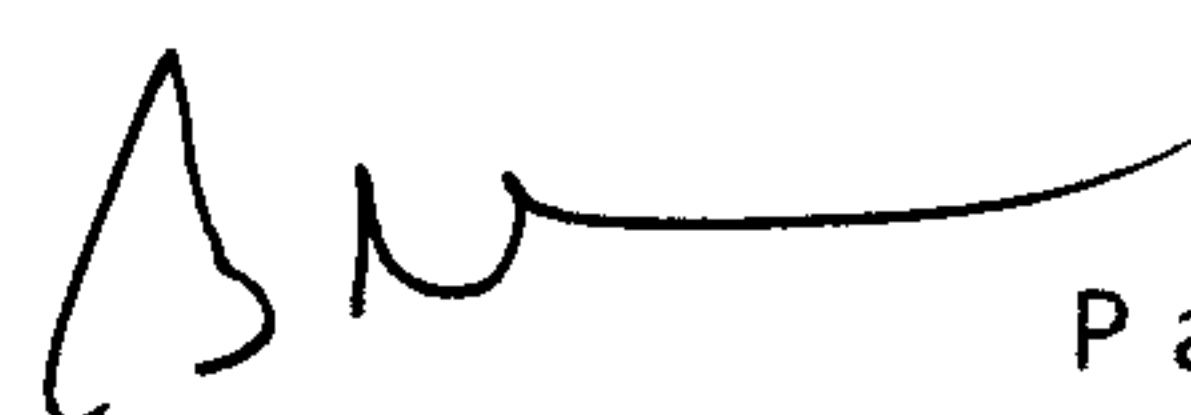
7. The Board of Directors of the Transferee Company, in its meeting held on 20th day of March 2017, passed a resolution approving the proposed Scheme placed before the Board by the Company Secretary vide Annexure N. BSE and NSE issued No Adverse Observations/No Objection letters, both dated 4th day of August 2017 to the Transferee Company vide Annexure "U (Colly)". It is stated in the application that no investigation has

been instituted or pending in relation to the Transferee Company under Chapter XIV of the Act. It is also stated in the application that no winding up proceedings are filed or pending against the Transferee Company. The Applicant Company filed its Annual Reports as on 31st day of March 2017. The Applicant Transferee Company also filed a certificate of Statutory Auditor of the Applicant Company issued under Section 133 of the Act.

8. In this Company Application, the Applicant Company, Idea Cellular Limited (Applicant Company), has prayed for holding separate meetings of the Equity Shareholders, Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders) of the Applicant Company for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme and for issuing appropriate directions incidental for holding of such meetings.

9. Having considered the entire material on record, this Tribunal passes the following order:-

- a. A meeting of the Equity Shareholders of the Applicant Company shall be convened and held at Cambay Sapphire (formerly Cambay Spa and Resort), Plot No. 22-24, Near GIDC, Opposite Hillwoods School, Sector 25, Gandhinagar-382 044, Gujarat, India, on Thursday, the 12th day of October 2017 at 11.00 a.m. (1100 hours), 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 Secured Creditors (including secured debenture holders) of the Applicant Company shall be convened and held at Cambay Sapphire (formerly Cambay Spa and Resort), Plot No. 22-24, Near GIDC, Opposite



Hillwoods School, Sector 25, Gandhinagar- 382 044, Gujarat, India, on Thursday, the 12th day of October 2017 at 12.00 noon (1200 hours), for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme.

- c. A meeting of the Unsecured Creditors (including unsecured debenture holders) of the Applicant Company shall be convened and held at Cambay Sapphire (formerly Cambay Spa and Resort), Plot No. 22-24, Near GIDC, Opposite Hillwoods School, Sector 25, Gandhinagar- 382 044, Gujarat, India, on Thursday, the 12th day of October 2017 at 1.00 p.m. (1300 hours), for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme.
- d. In view of Sections 230(4), 232(1) of the Act read with rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') and rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant Company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by the Equity Shareholders of the Applicant Company to the Scheme, shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system at the venue of the meeting to be held on Thursday, the 12th day of October 2017. In the case of meetings of Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders), the voting shall be carried out through ballot/polling paper.
- e. At least one month before 12th day of October 2017, i.e. the date of the aforesaid meetings, an advertisement about

convening of the said meetings, indicating the day, the date, place and time aforesaid, shall be published in English Daily, Indian Express (All editions) and a Gujarati translation thereof in Sandesh (Ahmedabad edition). The publication shall indicate time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Section 230-232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant Company or at the office of its Advocates, i.e. M/s. Singhi & Co., 1, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Ahmedabad-380 059 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Rules.

- f. At least one month before 12th day of October 2017, i.e. the date of the aforesaid meeting of the Equity Shareholders (including Public Shareholders), a notice in Form No. CAA.2 convening the said meeting, indicating the day, the date, the place and time aforesaid containing instructions with regard to postal ballot and e-voting (in case of the Equity Shareholders), 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 the provisions of Sections 230 – 232 of the Act and Rule 6 of the Rules, and the prescribed form of Proxy, shall be sent to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier or e-mail.
- g. A perusal of Annexure-U, Volume-V, page 1242, observation letter regarding draft scheme of arrangement involving amalgamation of Vodafone Mobile Services Limited and

Vodafone India Limited with Idea Cellular Limited (the applicant company) discloses as follows :-

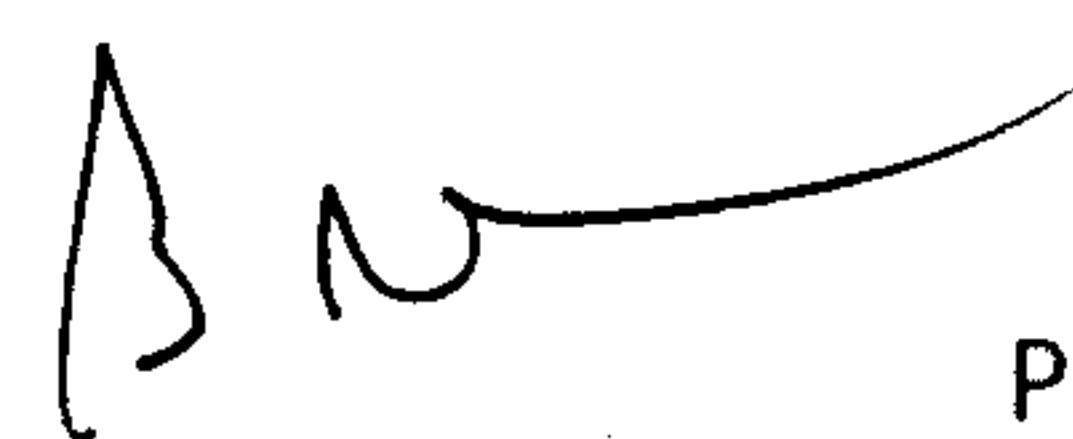
“SEBI had received a complaint alleging that one of the promoters of ICL(‘Purchasers’) had purchased 23% of shares of ICL before the announcement of the instant draft scheme of amalgamation and these transactions by the purchasers were in violation of Securities laws. The said allegations are being examined by SEBI. In this respect, the purchasers have submitted a voluntary undertaking not to dispose of the aforesaid shares till further directions of SEBI and any liability eventually held to be valid against the purchaser shall be borne by them. ICL has also submitted a voluntary undertaking stating, inter alia, that it will comply with the directions of SEBI in respect of the ongoing examination of the purchase of shares by the purchasers before the announcement of the proposed scheme. ICL has also given undertaking that any liability eventually held to be valid against it shall be borne by ICL.

Further the aforesaid complaint also alleged violation of Regulation 3(1) of SEBI (Substantial Acquisition and Takeover) Regulations, 2011 (‘SAST’) as the shareholding of ICL would increase from approx. 21% to approx. 26% pursuant to the instant scheme. The acquisition pursuant to draft scheme of arrangement is exempt from the obligation to make an open offer under Regulation 3 and Regulation 4 of SAST if the acquisition is pursuant to a scheme of arrangement, inter alia, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or Foreign. Thus, the said exemption is applicable only if National Company Law Tribunal (NCLT) approves the draft scheme.

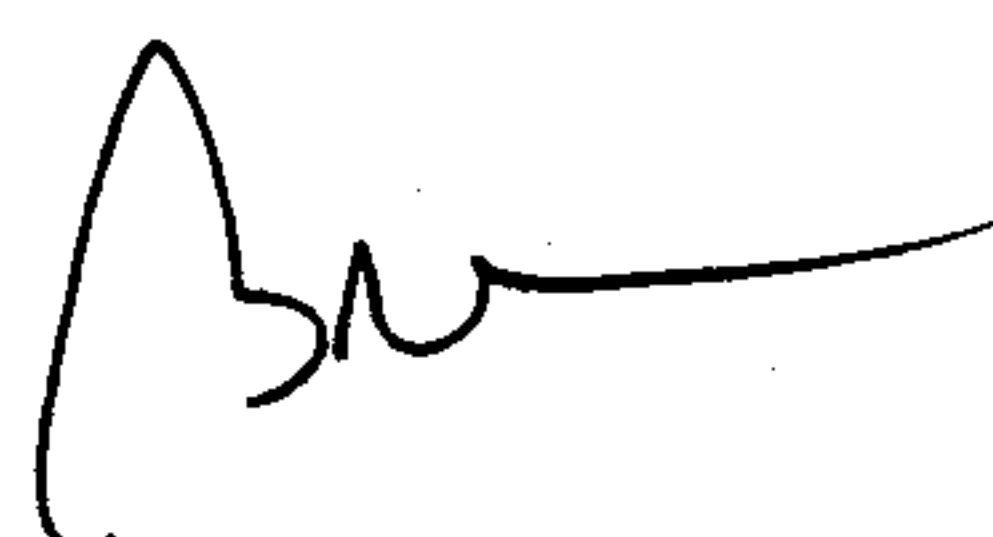
Abridged prospectus as mandated under Clause 8 of SEBI Circular shall contain risk factor No.1 detailing the risk associated with the outcome of the examination by SEBI of the allegations in the aforesaid complaint,”

In view of the above, the Applicant Company is directed to mention the above said paragraphs in the Explanatory Statement to the notice to shareholders prominently and further stating that SEBI is examining the allegations with reference to transactions done by the purchasers in the shares of ICL before the announcement of the instant scheme.

- h. The aforesaid notice and other documents shall also be placed on the website of the Applicant Company, if any, and the same shall be sent to SEBI [proviso to Section 230(3)]. The notice shall be sent to the Equity Shareholders of the Applicant Company with reference to the list of the persons appearing on the record of the Applicant Company and its register as on 5th day of September 2017, being the cut-off date as prescribed under rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut-off date would be the date determining the eligibility to vote by the Equity Shareholders.
- i. In addition, at least one month before the date of the aforesaid meetings of the Secured Creditors (including secured debenture holders) and the Unsecured Creditors (including unsecured debenture holders) to be held as aforesaid, a notice convening the said meetings, indicating the day, the date, the 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 the provisions of Sections 230 – 232 of the Act and Rule 6 of the Rules, and the prescribed form of Proxy, shall be sent to each of the Secured Creditors (including secured debenture holders) and the Unsecured Creditors (including unsecured debenture holders) of the Applicant Company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier. The notice shall be sent to the Secured Creditors (including secured debenture holders) and the Unsecured Creditors (including unsecured debenture holders) of the Applicant Company with reference to the list of the persons appearing on the record of the Applicant Company as on 31st day of July 2017.

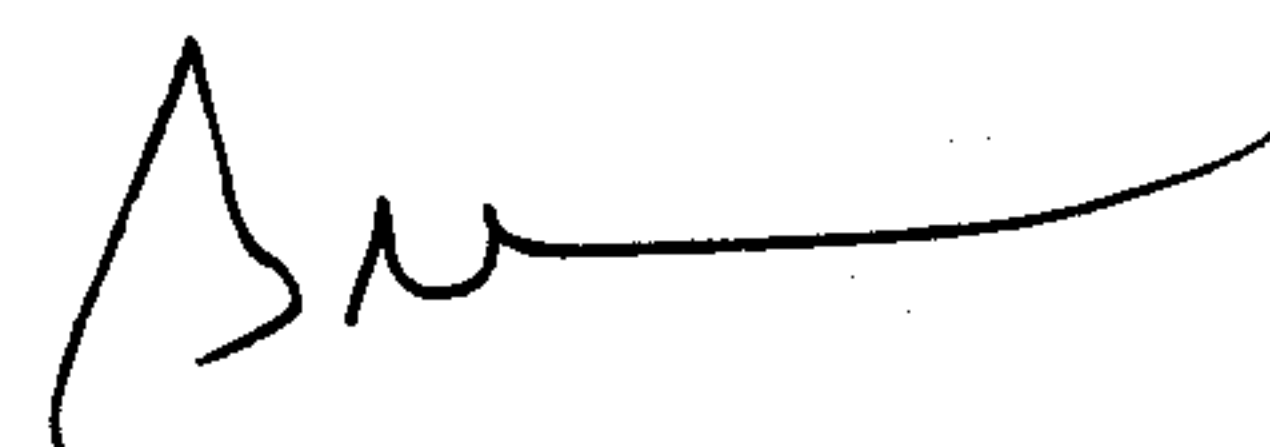


- j. Mr. Justice M. S. Shah, Former Chief Justice of Bombay High Court and in his absence, Mr. Arun Thiagarajan, an Independent Director of the Transferee Company shall be the Chairman/Chairperson of the aforesaid meetings to be held on Thursday, the 12th day of October 2017 and in respect of any adjournment or adjournments thereof.
- k. Mr. Umesh Ved, a practicing Company Secretary, is appointed as the scrutinizer for the meeting of the Equity Shareholders of the Applicant Company including for conducting the postal ballot and e-voting process and also for the meeting of the Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders) of the Applicant Company.
1. The Chairman/Chairperson appointed for the aforesaid meetings 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/Chairperson of the meetings shall have all powers under the Articles of Association of the Applicant Company and also under the Rules in relation to conduct of meetings, including for deciding any procedural questions that may arise at the meetings or at adjournment or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of Equity Shareholders by (i) postal ballot and e-voting; and (ii) electronic voting system at the venue of the meeting of the Equity Shareholders and for the Secured Creditors (including secured debenture holders) and the Unsecured Creditors



(including unsecured debenture holders) by ballot/polling paper.

- m. The quorum for the meeting of the Equity Shareholders shall be 30 (thirty) persons present in person. The quorum for the meeting of the Secured Creditors (including secured debenture holders) shall be 2 (two) persons present in person. The quorum for the meeting of the Unsecured Creditors (including unsecured debenture holders) shall be 5 (five) person present in person.
- n. Voting by proxy/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 meetings, is filed with the Applicant Company at its registered office at Suman Tower, Plot No. 18, Sector-11, Gandhinagar- 382 011, Gujarat, India, not later than 48 hours before the meetings vide Rule 10 of Rules read with Section 105 of the Act.
- o. The number and value of the equity shares of the Equity Shareholders or the value of the debts of the Secured Creditors (including secured debenture holders) and Unsecured Creditors (including unsecured debenture holders), 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/Chairperson of the meetings shall determine the number or value, as the case may be, for purposes of the meetings, subject to the orders of this Tribunal in the petition seeking sanction of the Scheme.



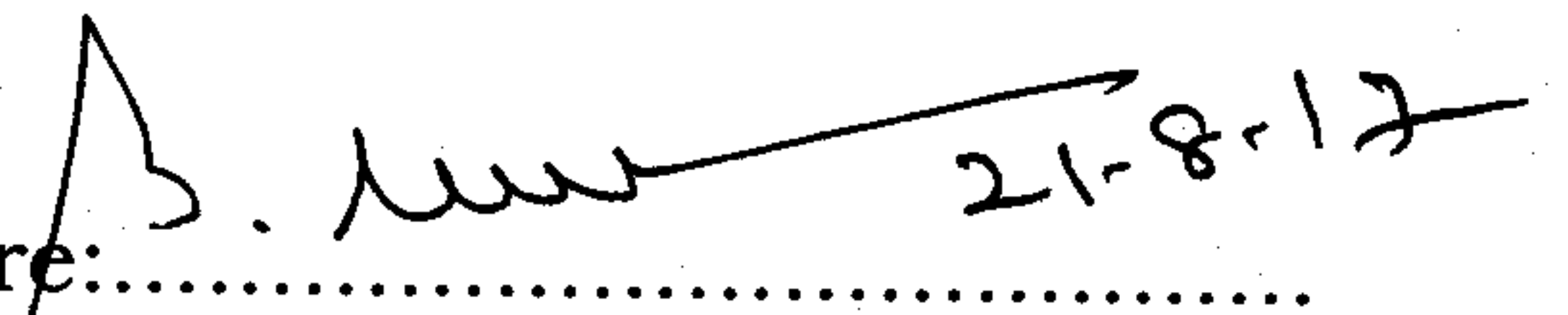
- p. Chairman/Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the directions regarding the issue of notices and the advertisement of the meetings, have been duly complied with as per Rule 12 of the Rules.
- q. It is further ordered that the Chairman/Chairperson shall report to this Tribunal on the result of the said meetings in Form No. CAA.4, verified by his affidavit as per Rule 14 of the Rules in Form No. CAA.4 within 7 (seven) days after the conclusion of the meetings. The report of Chairman/Chairperson shall be filed before this Tribunal by the Chairman/Chairperson himself/herself, but not Applicant Company.
- r. SEBI Circular requires that the Scheme shall be approved by the public shareholders of the Applicant Company. The voting in respect of the same is to be carried out through postal ballot and e-voting. Since the Applicant Company is directed to convene the meeting of the Equity Shareholders, which includes Public Shareholders, and voting in respect of Equity Shareholders which includes Public Shareholders is through postal ballot and e-voting, it is sufficient compliance of SEBI Circular. However, the scrutinizer appointed for the said meeting of the Equity Shareholders shall also submit his separate report, to the Chairman of the Applicant Company or to the person so authorised by him, with regard to the result of the postal ballot and e-voting in respect of the public shareholders. The said report to be submitted by the scrutinizer shall be in addition to the report submitted by the scrutinizer to the Chairman/Chairperson of the meeting with regard to the result of the postal ballot and e-voting in respect of the Equity Shareholders and the report with regard to the result of the ballot/polling paper cast at the

meeting in respect of the Secured Creditors (including secured debenture holders) and the Unsecured Creditors (including unsecured debenture holders).

- s. The observational letter dated 4th August, 2017 of BSE requires that the scheme of arrangement shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it in terms of Clause 9 of Annexure 1 to SEBI Circular dated March 10, 2017. Hence the Hon'ble Chairman and the learned Scrutinizer shall observe the same in stating the result.
- t. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Rules, the Applicant Company shall send the notice of meeting under sub-section (3) of Section 230 of the Act read with Rule 6 of the Rules in Form No. CAA.3 along with the copy of the Scheme, the explanatory statement and the disclosures mentioned under Rule 6 of the Rules to (i) the Central Government through Regional Director, North-Western Region; (ii) the Registrar of Companies, Gujarat; (iii) concerned Income-Tax Authorities; (iv) the Official Liquidator, Ahmedabad; (v) BSE Limited; (vi) the National Stock Exchange of India Limited; (vii) SEBI; (viii) Reserve Bank of India; (ix) Competition Commission of India; and (x) Department of Telecommunications, Government of India, 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 notice is sent to the members or creditors of the Applicant Company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Rules. The aforesaid authorities, who

desire to make any representation under sub-section (5) of Section 230 of the Act, 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.

10. This Company Application is disposed of accordingly.

Signature:  21-8-17
[Bikki Raveendra Babu, Member (J)]

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