

21
**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 64/NCLT/AHM/2017 (New)
Madhya Pradesh High Court Indore Bench C.P. No. 49/2016 (Old)**

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 24.08.2017**

Name of the Company: Advernt Dealtrade Pvt. Ltd.
Blaise Distributors Pvt. Ltd.
Drawback Dealers Pvt. Ltd.
Armaan Barter Pvt. Ltd.
Pushpak Fincon 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.

2.

ORDER

None present for Petitioners.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 24th day of August, 2017.

Appearance:

Ms. Soumya Sharma, Advocate for Mr. Adhar Sharma, Advocate for the Petitioner Companies.

ORDER

1. By way of this joint petition under Sections 391 to 394 of the Companies Act, 1956 (Sections 230 to 232 of the Companies Act, 2013), the petitioners are seeking sanction of a proposed Scheme of Amalgamation of M/s Advent Dealtrade Private Limited (the first transferor company) and M/s Blaise Distributors Private Limited (the second transferor company) and M/s Drawback Dealers Private Limited (the third transferor company) and M/s Armaan Barter Private Limited (the fourth transferor company) with Pushpak Fincon Private Limited (the transferee company) and their respective shareholders and creditors ("Scheme" for short).

2. The petitioner companies had jointly filed an application, being Company Petition No.45 of 2016, before the Honourable High Court of Madhya Pradesh, Judicature at Jabalpur, Bench at Indore seeking dispensation of convening the meeting of shareholders on the basis of consent letters and secured and unsecured creditors, as there were no creditors, and also from publication of notice in newspaper and gazette. The Honourable High Court of Madhya Pradesh, Bench at Indore, by order dated 22nd November, 2016, was pleased to dispense with convening of meeting of shareholders, in view of their consent letters and

meeting of secured and unsecured creditors of the petitioner companies as there were no secured and unsecured creditors. The Honourable High Court was also pleased to dispense with publication of notice in newspaper and Madhya Pradesh Gazette.

3. The petitioner companies thereafter filed a joint petition, being Company Petition No.49 of 2017, before the Honourable High Court of Madhya Pradesh, Bench at Indore, seeking sanction of the Scheme. Subsequently, the Honourable High Court, vide order dated 20.12.2016, transferred the aforesaid Company Petition to this Tribunal and it came to be renumbered as T.P. Nos. 64 of 2017.

4. This Tribunal vide order dated 25th May, 2017 fixed the date of hearing as 21.07.2017. This Tribunal also directed the petitioner-companies to publish notice of hearing of the petition in "Dainik Bhaskar" Indore edition and "Free Press" Indore edition not less than ten days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing. The petitioner-companies were also directed to give notice to :-

- a. The Central Government through the Regional Director;
- b. The Registrar of Companies, Gwalior;
- c. The concerned Income Tax Authorities;
- d. The concerned Official Liquidator in the case of Transferor Companies; and
- e. The Reserve Bank of India.

stating that, if they desire to make any representation, the same should be sent to the Tribunal within 30 days from the date of

receipt of notice and, in case no representation was received by the Tribunal within a period of thirty days, it should be presumed that the authorities have no representation to make on the proposed Scheme of Arrangement. The petitioner companies were also directed to issue individual notices to their shareholders, secured creditors and unsecured creditors, if any, at least ten days before the date of hearing informing them about the date of hearing of the petition so as to enable them to state their objections, if any, before this Tribunal on or before the date of hearing. The petitioners were also directed to file proof of service in respect of the directions given by this Tribunal.

5. Pursuant to the aforesaid order of this Tribunal, the learned Advocate for the petitioners has filed proof of service of notice on Statutory Authorities and proof of publication of notice in newspapers on the 21st July, 2017.

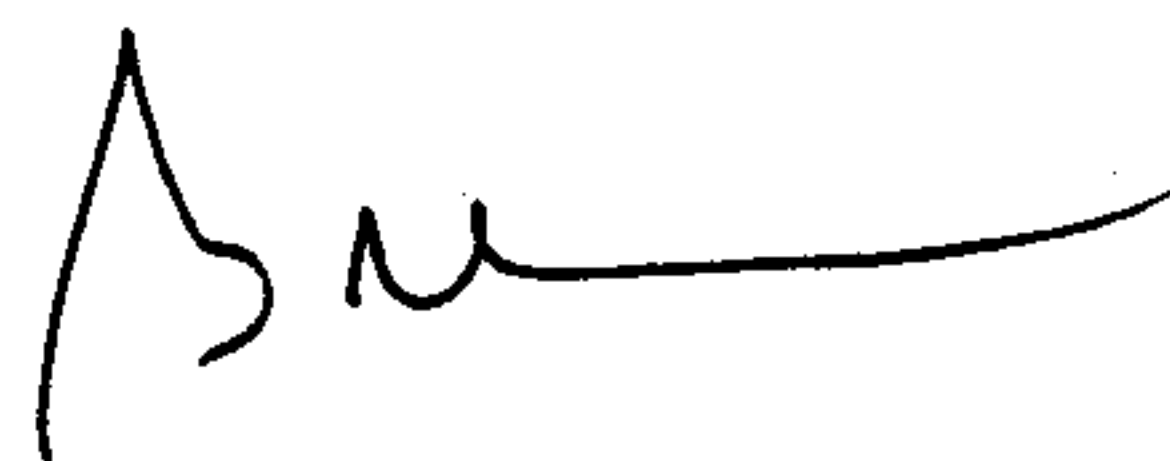
6. Upon receipt of notice, the Official Liquidator has filed a representation dated 7th July, 2017. Likewise, the Regional Director has also filed a representation dated 22nd July, 2017. In reply to the representations of the Official Liquidator and the Regional Director, one of the Directors of the petitioner companies has filed an affidavit on 10th August, 2017. No representation is received from any other authority.

7. Heard learned Advocate, Ms. Soumya Sharma for Mr. Adhar Sharma, Advocate for the petitioners.

8. In the representation filed by the Official Liquidator, it is stated that the office of the Official Liquidator has not received any objection against the proposed Scheme of

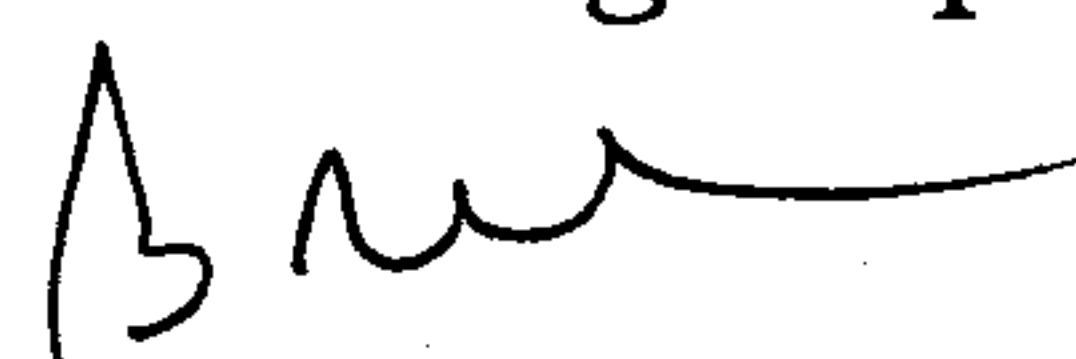
Amalgamation from any person or party interested in the Scheme, in any manner, as on the said date. It is also stated in the said representation that the Chartered Accountants engaged by the Official Liquidator to scrutinize the Balance Sheet and other documents of the Petitioner Transferor Companies, in their report stated that, in their opinion, the scheme of Amalgamation does not represent any clause or objective that could be prejudice to the interest of public at large and shareholders, employees and Creditors of the petitioner companies.

9. In paragraph 18, the Official Liquidator has observed that this Tribunal may direct the Transferee Company to comply with the requirements of Accounting Standards mentioned under Section 133 of the Companies Act, 2013. In response to the said observation of the Official Liquidator, the petitioners in paragraph 8 of their reply stated that the Transferee Company undertakes full responsibility to comply with the said requirement. The petitioners have also produced a certificate from M/s Agrawal & Singhal, Chartered Accountants as Annexure A-2 to the reply certifying that the accounting treatment of the merger Scheme is in conformity with the accounting standards prescribed under Section 133 of the Act. In light of the above, this Tribunal is of the opinion that the said observation of the Official Liquidator stands satisfied.



10. In response to the observation of the Official Liquidator in paragraph 20 of the representation, it is stated in paragraph 9 of the reply that the petitioner transferee company undertakes full responsibility to ensure the statutory compliance of all applicable laws and shall not absolve itself from any of its statutory liabilities in any manner. In light of the above, this Tribunal is of the view that the observation of the Official Liquidator in the said paragraph stands satisfied.

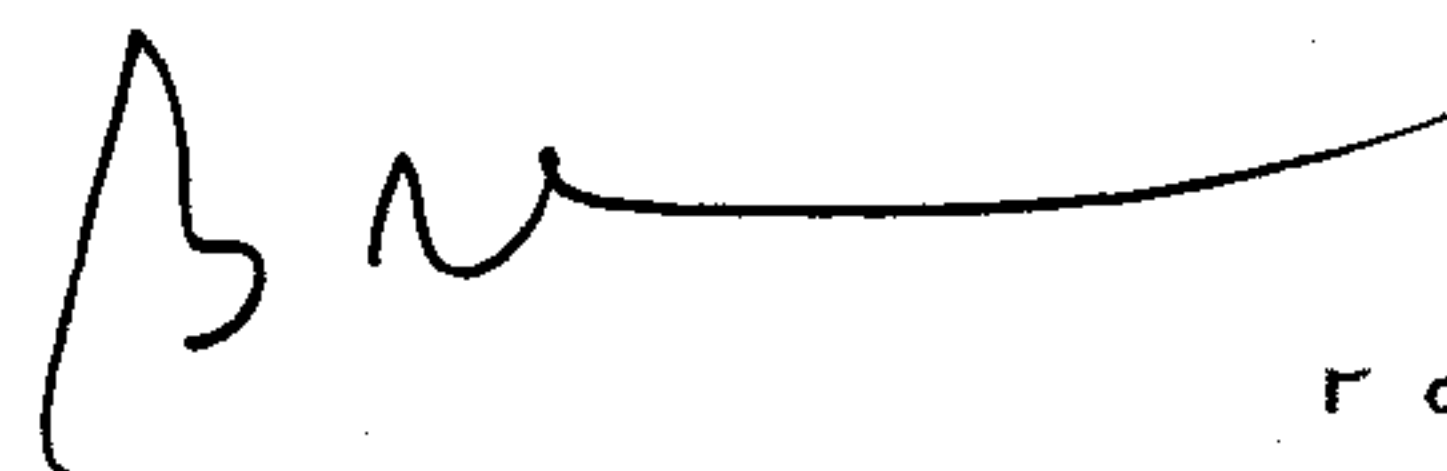
11. In the representation dated 22nd July, 2017, the Regional Director has stated that the Petitioner Transferee company is engaged in the business of investment activity and as per RBI Guidelines, if more than 50% of company's assets are financial and if more than 50% of its income is so generated from financial assets then it falls under the category of NBFC. In response to the said observation made in the report of the Regional Director, in the affidavit dated 10th August, 2017 filed by Mr. Rajendra Jain, Director of the Petitioner Companies, attention of this Tribunal is drawn towards a Master Circular of Reserve Bank of India bearing No.RBI/2014-15/41 DNBS (PD) CC No. 393/03.02.001/2014-15 dated 1st July, 2014, which states that the Core Investment Companies which have their assets predominantly as investments in shares for holding stake in group companies



but not for trading, not holding/accepting public deposits and also do not carry any other financial activity such Core Investment Companies (CIC) are exempt from registration from NBFC under section 45IA of RBI Act, 1934. In light of the above, the observation made by the Regional Director in paragraph 2(e) of the representation stands satisfied.

11.1 The petitioners filed copy of letter dated 7th June, 2017 received by the learned Advocate for the petitioners from the Reserve Bank of India, wherein it is stated that the petitioner companies are not registered with the Reserve Bank of India and, therefore, it is not possible to make any comment by the Reserve Bank of India in respect of the amalgamation scheme. In view of the finding in paragraph 11, there is no need for registration of the petitioner companies with the Reserve Bank of India.

12. The Regional Director, in paragraph 2(f) of the representation has stated that as per the report of the Registrar of Companies, Gwalior dated 5th July, 2017, there were no complaints against the Petitioner Companies and there was no complaint/representation against the scheme of arrangement of the Petitioner Companies. The Regional Director has also stated that the Scheme is not prejudicial to the interest of shareholders of the petitioner companies and the public at large.



13. It is stated in the affidavit filed on behalf of the petitioner companies that the Petitioner Transferee Company has undertaken full and complete responsibility to comply with all the requirements of any law, guidelines, circulars or directions etc. issued by any statutory authority from time to time in connection with this Amalgamation.

14. It is stated in the petition that no investigation or proceeding has been instituted or is pending in relation to any of the petitioner companies.

15. Considering the entire facts and circumstances of the case and on perusal of the Scheme, it appears that requirements of the provisions of Sections 230 - 232 of the Companies Act, 2013 are satisfied. The Scheme is genuine and *bona fide* and in the interest of the members and creditors of the Petitioners.

16. In the result, this Company Petition is allowed. The Scheme, which is at "Annexure -A-1" to the Petition, is hereby sanctioned and it is declared that it shall be binding on the Petitioner Companies, their shareholders, creditors and all persons concerned under the Scheme. The petitioner transferor companies, viz. Advent Dealtrade Private Limited, Blaise Distributors Private Limited, Drawback Dealers Private

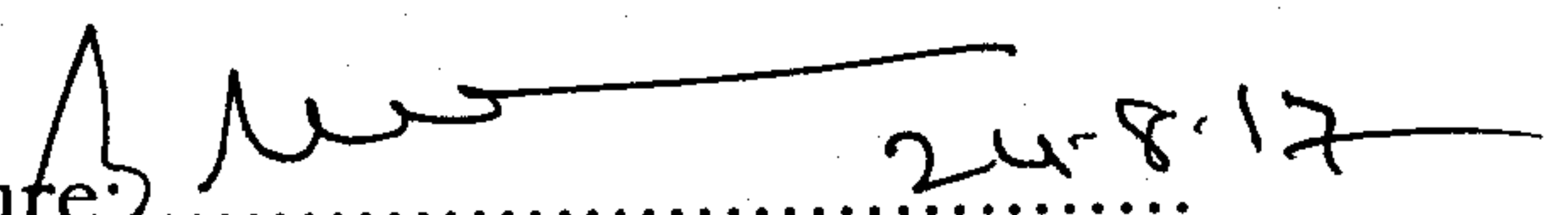
Limited and Armaan Barter Private Limited shall stand dissolved without following the process of winding up.

17. Fees of Official Liquidator are quantified at Rs10,000/- each in respect of the transferor companies. The said fees shall be paid by petitioner transferee company viz, Pushpak Fincon Private Limited.

18. The petitioner transferee company is directed to preserve the books of accounts, papers and records of all the transferor companies and shall not dispose of the same without prior permission of Central Government as per the provisions of Section 239 of the Companies Act, 2013.

19. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on 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. This Company Petition is disposed of accordingly.

Signature:  24-8-17
[Bikki Raveendra Babu, Member (J)]

gt