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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) No. 99/NCLT/AHM/2017
c.w. CA(CAA) No. 21/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 19.09.2017**

Name of the Company: Shaswat Nirman 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>
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1.

2.

ORDER

None present for Petitioner.

Common order pronounced in open Court. Vide separate sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 19th day of September, 2017.

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

CP(CAA) No.99/NCLT/AHM/2017

With

CP(CAA) No.100/NCLT/AHM/2017

In the matter of :-

1. Shaswat Nirman Private Limited,
A company incorporated under the
Companies Act, 1956 and having
its Registered Office at: 109, Man Heritage,
1st Floor, South Tukoganj,
Indore, Madhya Pradesh – 452001.
... Petitioner of CP(CAA) No.99 of 2017
(Transferor Company)
2. Indraprastha Supermart Private Limited,
A company incorporated under the
Companies Act, 1956 and having
its Registered Office at: 109, Man Heritage,
1st Floor, South Tukoganj,
Indore, Madhya Pradesh – 452001.
... Petitioner of CP(CAA) No.100 of 2017
(Transferee Company)

Order delivered on 19th September, 2017

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

Appearance:

Ms. Gargi R. Vyas, Advocate for the petitioner companies.

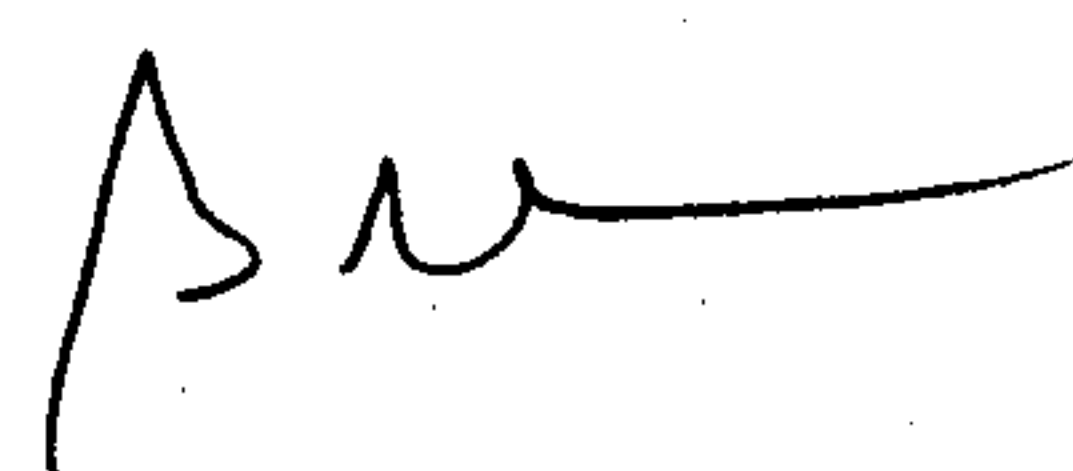
COMMON ORDER

1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Amalgamation of Shaswat Nirman Private Limited ("Transferor Company") with Indraprastha Supermart Private Limited ("Transferee Company") and their respective shareholders and creditors ["Scheme" for short].



2. The petitioner companies had filed a joint application before this Tribunal, being CA(CAA) No. 21 of 2017, seeking directions for the purpose of convening and holding meetings of shareholders and unsecured creditors of the petitioner companies and also seeking dispensation of meeting of secured creditors for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme of Amalgamation between Shaswat Nirman Private Limited and Indraprastha Supermart Private Limited and their respective shareholders. The petitioner companies, in the said application, stated that there were no secured creditors of the petitioner companies. This Tribunal, vide order dated 13th June, 2017, issued necessary directions for the purpose of convening and holding meetings of equity shareholders and unsecured creditors of the petitioner companies.

3. This Tribunal, vide the aforesaid order dated 13th June, 2017, directed the petitioner companies to publish advertisement about convening of the meetings, as aforesaid, in English daily "Free Press Journal" and Hindi daily "Choutha Sansar", both Indore edition. The petitioner companies were also directed to send notice about convening of the said meetings indicating day, date, place and time together with a copy of the Scheme, etc. to each of the equity shareholders and creditors of the petitioner companies. The Chairperson appointed for conducting the aforesaid meetings was also directed to report to this Tribunal the results of the said meetings within seven days after conclusion of the meetings. The petitioner companies were also directed to serve notice on the statutory authorities, namely, (i) the Central Government through



the Regional Director, North Western Region, (ii) the Registrar of Companies, Gwalior, (iii) the Income Tax Authorities and only in the case of the Transferor Company (iv) the Official Liquidator concerned, 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 the notice, failing which it would be presumed that they have no objection make on the proposed Scheme.

4. Pursuant to the aforesaid order dated 13th June, 2017, the petitioner companies published advertisements in English daily "Free Press Journal" and Hindi daily "Choutha Sansar" on 15th June, 2017 and served notice of the meetings on the statutory authorities as well as equity shareholders and creditors of the petitioner companies. The Chairman appointed for conducting the meetings filed affidavits dated 30th June, 2017 before this Tribunal confirming the said aspect. Thereafter, the Chairman of the meetings filed affidavit of publication and service dated 15th July, 2017. The Chairman of the meetings also filed report dated 27th July, 2017 recording results of meetings of unsecured creditors and equity shareholders of both the companies. As per the report of the Chairman, all the equity shareholders and unsecured creditors of the petitioner transferor company voted in favour of the Scheme and in the case of the petitioner transferee company required majority of the equity shareholders and unsecured creditors voted in favour of the Scheme.

5. Pursuant to the notice issued to the Central Government, the Regional Director, North-Western Region, Ahmedabad, filed a common representation dated 22nd July, 2017 on 24th July, 2017.



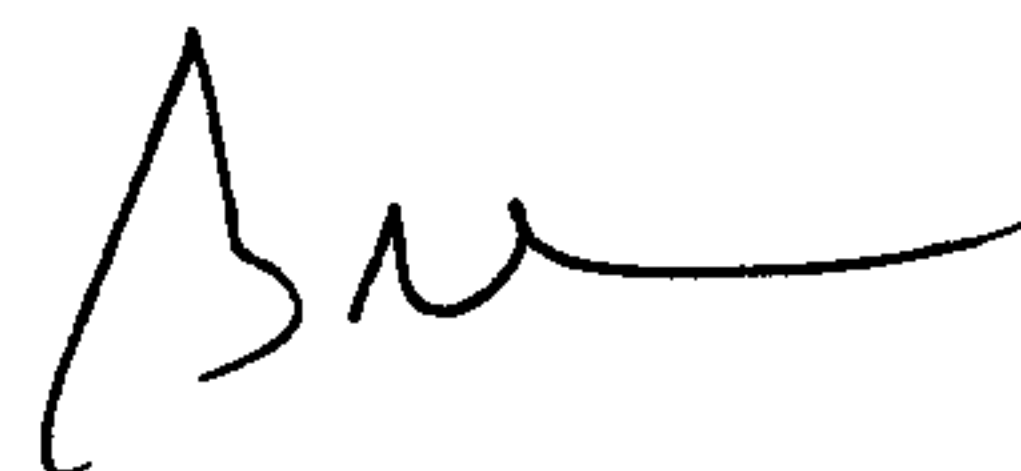
The Official Liquidator, Indore, filed representation dated 7th July, 2017. This Tribunal has not received any representation from any other authority.

6. The petitioner companies, thereafter, filed the present petitions on 14th August, 2017 seeking sanction of the Scheme. This Tribunal vide order dated 30th August, 2017, while admitting the petitions, ordered that the petitioners shall advertise notice of hearing of the petitions in English daily "Free Press Journal" and Hindi daily "Choutha Sansar", both Indore edition, not less than ten days before the fixed date of hearing calling for objections, if any, on or before the date of hearing. The petitioners were also directed to issue notice to the Regional Director and Registrar of Companies informing the date of hearing.

7. Pursuant to the aforesaid order dated 23rd August, 2017, advertisements, as directed by this Tribunal, were published in the respective newspapers on 3rd September, 2017 and notices were served on the statutory authorities. Affidavit dated 8th September, 2017 confirming the said aspect has been filed by the authorized signatory of the petitioner companies.

8. Heard learned Advocate, Ms. Gargi Vyas, for the petitioner-companies.

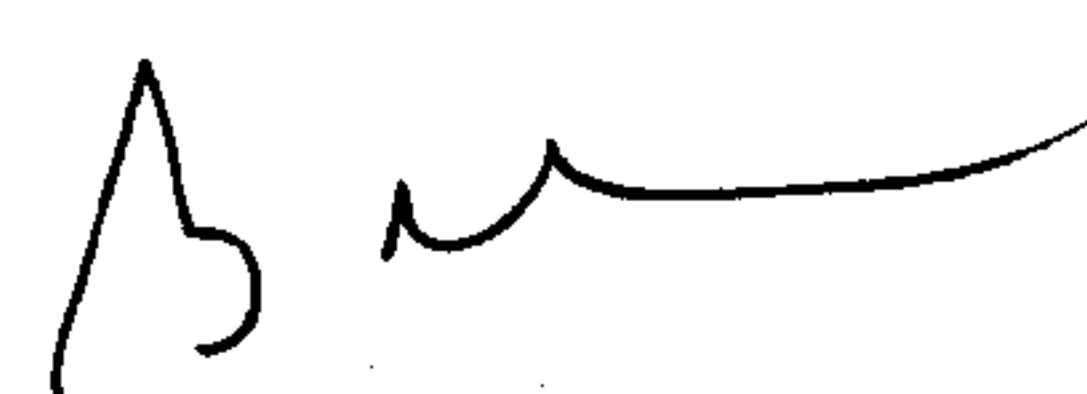
9. Learned counsel for the petitioners has submitted that the petitioners have not filed any reply to the representation of the Regional Director as there are no adverse remarks in the said representation. However, an affidavit-in-rejoinder dated 13th



September, 2017 has been filed in reply to the representation of the Official Liquidator.

10. The Regional Director has stated in the representation that, as per the report received from the office of the Registrar of Companies, there are no complaints against the petitioner companies and also there is 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 the shareholders of the petitioner companies and the public at large.

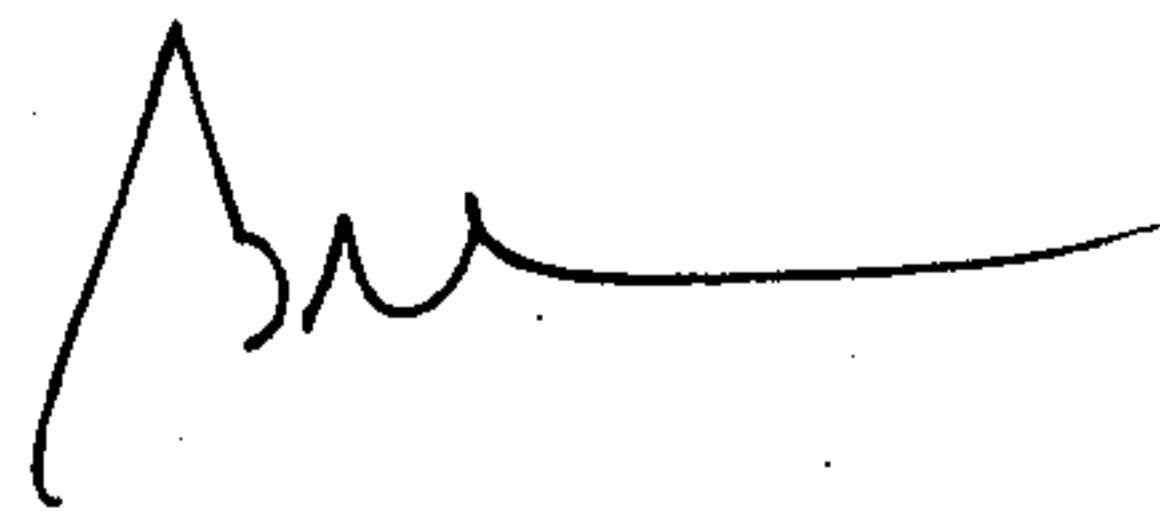
11. In paragraph 17 of the representation of the Official Liquidator, it is prayed that necessary directions may be issued to the Transferee Company to take responsibility in respect of payment of Income Tax/Service Tax and other taxes, if any, arises to the concerned authority after implementation of the Scheme of Amalgamation. The petitioner transferee company, in paragraph 2.1 of the reply stated that all costs, charges, taxes, including duties, levies and all other expenses, if any, arising out of or incurred in connection with this Scheme and matters incidental thereto shall be borne by the petitioner transferee company. In reply to the observations made by the Official Liquidator in paragraph 18 of the representation, it is stated in the rejoinder affidavit that the petitioner transferee company shall preserve its books of accounts, papers and records and shall not dispose them of without the prior permission of the Central Government. So far as the observation made by the Official Liquidator in paragraph 19 of the representation regarding compliance of requirements of



Section 133 of the Companies Act, 2013 is concerned, it is stated in the rejoinder affidavit that the petitioner shall comply with the requirements of Accounting Standards prescribed under Section 133 of the Act. The petitioner transferee company has also produced a certificate from its Statutory Auditors stating that the accounting treatment contained in the Scheme is in compliance with the applicable Accounting Standard notified by Central Government under the Companies Act, 2013. In response to the observation made in paragraph 21 of the representation of the Official Liquidator, it is stated in paragraph 2.4 of the rejoinder affidavit that the transferee company undertakes to ensure statutory compliance of all applicable laws and that, upon sanctioning of the Scheme, it shall not be absolved from any of its statutory liability, in any manner.

12. 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 satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.

13. In the result, these petitions are allowed. The Scheme of Amalgamation as placed at Annexure-III to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the petitioner- companies namely, Shaswat Nirman Private Limited and Indraprastha Supermart Private Limited, their equity shareholders, creditors and all concerned under the Scheme. The petitioner



transferor company, i.e. Shaswat Nirman Private Limited, shall stand dissolved without the process of winding up.

14. The fees of the Official Liquidator are quantified at Rs. 15,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.

15. The Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Government as required under section 239 of the Companies Act, 2013.

16. It is further directed that even after the Scheme is sanctioned, the Transferor Company shall comply with all the applicable provisions of law and shall not be absolved from any of its statutory liability.

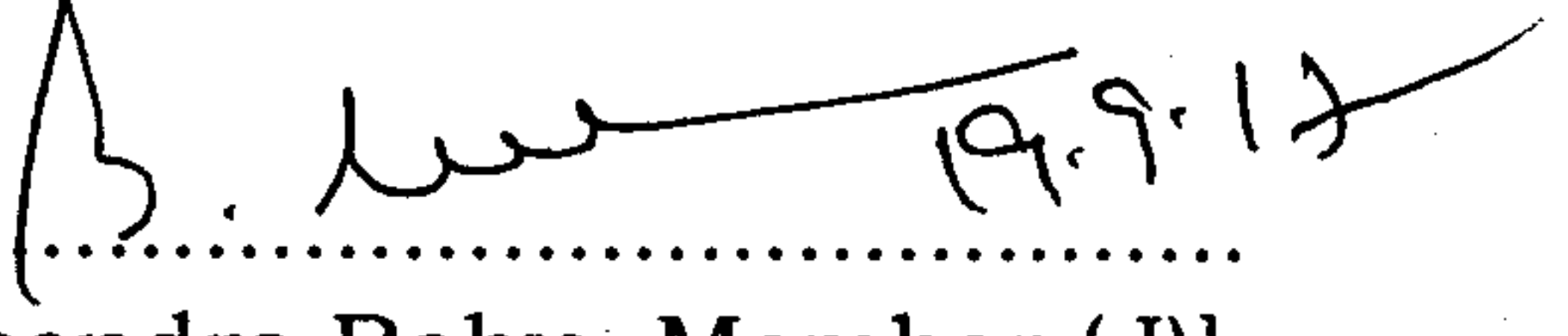
17. It is ordered that the petitioner companies shall comply with Rule 17(2) of Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order, if any, for confirmation of the Scheme in form INC-28 with the Registrar of Companies having jurisdiction over the Petitioner Companies.

18. 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.

19. These company petitions are disposed of accordingly.

Signature:  19.9.17
[Bikki Raveendra Babu, Member (J)]

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