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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) No. 93/NCLT/AHM/2017
c.w. CA (CAA) No. 65/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 11.10.2017**

Name of the Company: Arvind Fashion Brands Ltd.
Arvind Sports Lifestyle 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.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioners.

Common Order pronounced in open court. Vide Separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 11th day of October, 2017.

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

CP(CAA) No.93/NCLT/AHM/2017

With

CP(CAA) No.102/NCLT/AHM/2017

In the matter of :-

1. Arvind Fashion Brands Limited
(CIN No. U52100GJ2015PLC082094)
2. Arvind Sports Lifestyle Limited
(CIN No. U52100GJ2015PLC082095)

Both the companies incorporated
under the provisions of Companies Act,
1956 and having their registered offices
At Arvind Premises, Naroda Road,
Ahmedabad – 380 025

In the state of Gujarat. ... Petitioners of CP(CAA) No.93 of 2017
(Transferor Companies)

3. Anveshan Textile Limited
(CIN U65944GJ1993PLC077671)
A company incorporated under the
provisions of Companies Act, 1956
and having its registered office at
Arvind Premises, Naroda Road,
Ahmedabad – 380 025

In the state of Gujarat. ... Petitioner of CP(CAA) No.102 of 2017
(Transferee Company)

Order delivered on 11th October, 2017

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

Appearance:

Mrs. Swati Soparkar, Advocate for the Petitioner Companies.

COMMON ORDER

1. These are two petitions filed (i) jointly by two Transferor companies and (ii) by the Transferee Company under Section 230 and 232 of the Companies Act, 2013 seeking sanction of this

Tribunal to a Composite Scheme of Arrangement in the nature of Amalgamation of Arvind Fashion Brands Limited and Arvind Sports Lifestyle Limited with Anveshan Textile Limited, the petitioner Transferee Company.

2. The said petitioner companies had initiated the proceedings before this Tribunal in form of two applications (i) joint application being C A (CAA) No. 65 of 2017 by the Transferor Companies. Vide the said application, the Transferor Companies sought dispensation of meetings of the Equity Shareholders and sought directions to convene meeting of the Unsecured Creditors of both the Transferor Companies. It was submitted that all the shareholders of both Transferor Companies had submitted written consent letters on affidavit approving the proposed Scheme. It was also submitted that there were no Secured Creditors of any of the Transferor Companies. Hence, vide order dated 14th June 2017, passed in CA CAA No. 65 of 2017, the meetings of the shareholders of both the Companies were dispensed with. Directions were issued to convene and hold separate meetings of Unsecured Creditors of the Transferor Companies, to consider and if thought appropriate approve with or without modifications, the proposed Scheme of Arrangement. It was further submitted that since the operating units of the Transferor Companies are based at Bangalore, the meetings of unsecured creditors be permitted to be convened in Bangalore.



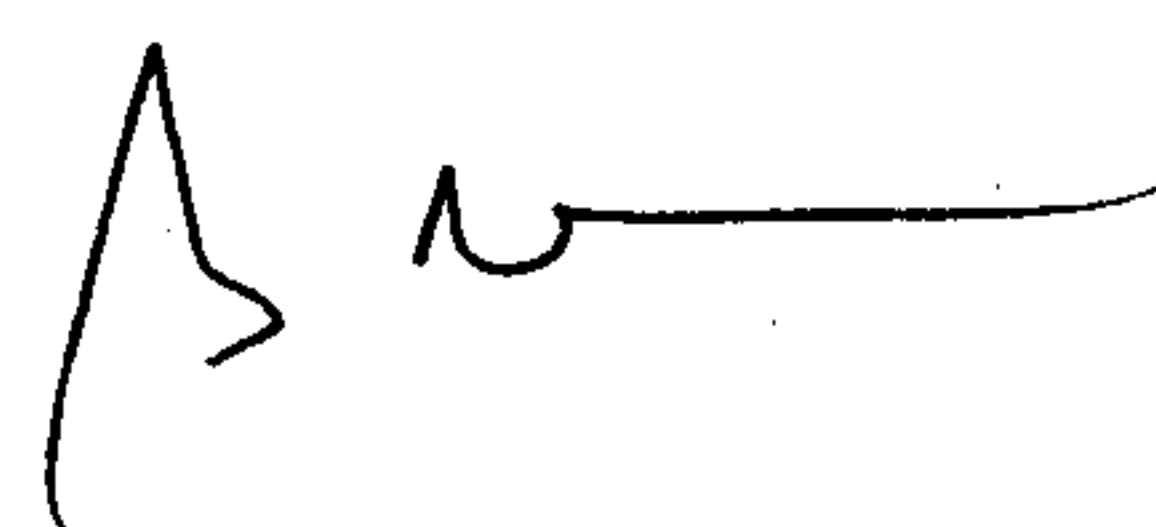
3. So far as the Transferee Company was concerned, it sought dispensation of meeting of the Equity Shareholders and sought directions to convene separate meetings of the Secured and Unsecured Creditors of the Transferee Company. It was submitted that all the shareholders of the Transferee Company had submitted written consent letters on affidavit approving the proposed Scheme. Hence, vide order dated 14th June 2017, passed in CA CAA No. 66 of 2017 the meeting of the shareholders of the Transferee Company was dispensed with. Directions were issued to convene and hold separate meetings of Secured and Unsecured Creditors of the Transferee Company, to consider and if thought appropriate approve with or without modifications, the proposed Scheme of Arrangement.

4. Pursuant to the directions of this Tribunal, notices of the meetings were sent individually to all the Unsecured Creditors of the Transferor Companies; together with a copy of the Scheme of Arrangement and the Explanatory Statement as well as all other required disclosures. The notice convening the meetings were also advertised in Ahmedabad editions of English daily 'Indian Express' and Gujarati daily 'Sandesh' on 27th June 2017. They were also published in Bangalore Edition of English daily Indian Express and Kannad daily. Kannad Prabha on 28th June 2017. An affidavit dated 5th July 2017 was filed by the Chairman of the said meetings confirming the compliance of the directions. The aforesaid meetings were duly convened and held on 28th July



2017 at Bangalore and the Chairman appointed for the said meetings reported the result of the said meetings to this Tribunal vide affidavit dated 4th August 2017. A perusal of the same confirms the unanimous approval of the proposed Scheme by the Unsecured Creditors of both the Transferor Companies, present and cast valid votes at the respective meetings. The petition, being CP(CAA) No.93 of 2017 was filed by the Transferor Companies on 9th August 2017.

5. Similarly, pursuant to the directions of this Tribunal, notices of the meetings were sent individually to the sole Secured Creditor and all the Unsecured Creditors of the Transferee Company; together with a copy of the Scheme of Arrangement and the Explanatory Statement as well as all other required disclosures. The notice convening the meetings were also advertised in Ahmedabad editions of English daily 'Indian Express' and Gujarati daily 'Sandesh' on 27th June 2017. An affidavit dated 5th July 2017 was filed by the Chairman of the said meetings confirming the compliance of the directions. The aforesaid meetings were duly convened and held on 29th July 2017 and the Chairman appointed for the said meetings reported the result of the said meetings to this Tribunal vide affidavit dated 4th August 2017. A perusal of the same confirms the unanimous approval of the proposed Scheme by the Unsecured Creditors of the Transferee Company, present and cast valid votes at the said meeting. However, the sole Secured Creditor



sought adjournment of the meeting to await approval of the Scheme from its higher authorities. The said meeting was accordingly adjourned to 29th August 2017 and was accordingly convened, where the said secured creditor granted approval to the proposed Scheme. Thereafter, additional report was filed by the Chairman of the meeting on 4th September 2017. Then the petition by the Transferee Company, being CP(CAA) No.102 of 2017, was filed on 5th September 2017.

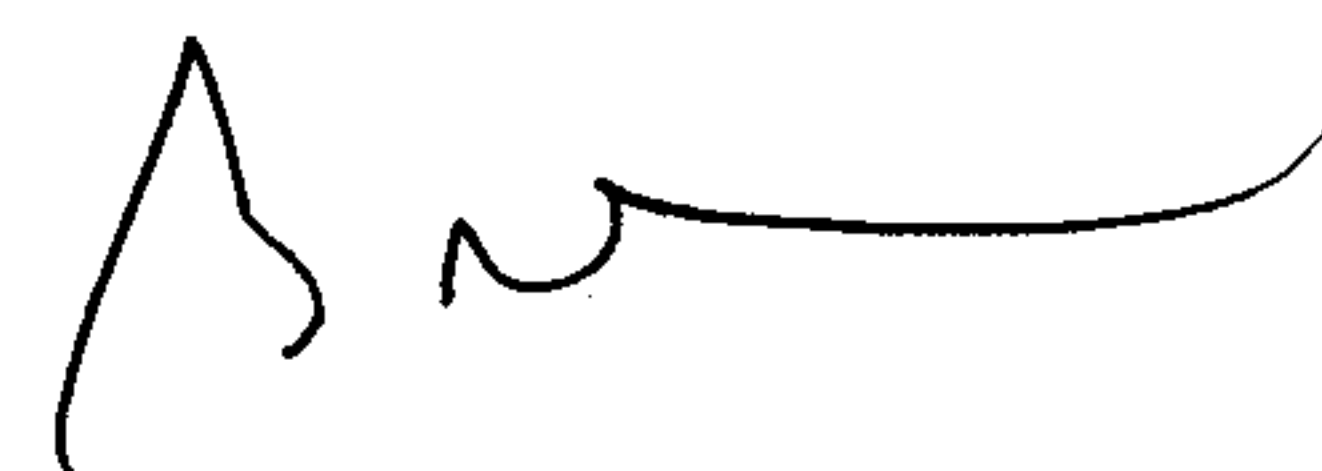
6. Vide the aforesaid order dated 14th June 2017, the petitioner companies were also directed to serve Notice of the Scheme to the Regulatory Authorities-viz. (i) Central Govt. through the Regional Director, North-Western Region, (ii) Registrar of Companies, Gujarat, (iii) concerned Income Tax Authorities; and for the Transferor Companies only (iv) Official Liquidator along with Notice, Explanatory Statement and other requisite documents and disclosures. The notices were duly served on all the authorities on or before 30th June 2017. Affidavits dated 5th July 2017 confirming the compliance of the said directions for service of notice on all the above Regulatory Authorities along with acknowledgments for the same were filed with this Tribunal. In response to the said notice, a representation dated 22nd July 2017 was received from the Regional Director, Western Region and representations dated 28th July 2017 were received from the Official Liquidator. Representation dated 25th July 2017 was



received from the Income Tax Authorities. No other representation was received from any other regulatory authority.

7. Thereafter, this Tribunal vide order dated 6th September 2017, while admitting the petitions, issued directions to publish notice of hearing of the Petitions in the newspapers viz. English daily, Indian Express and Gujarati daily, Sandesh Ahmedabad editions for all the companies and only for the transferor companies, Indian Express and Kannad Prabha in Bangalore editions, at least before 10 days of the date of hearing of the petition. Further directions were also issued to serve notice of hearing of the petition to the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities and (iv) Official Liquidator for the Transferor Companies, at least before 10 days of the date of hearing of the petition.

8. Pursuant to the said directions, notices were duly served by the petitioner companies on the statutory authorities on 8th September 2017 and publications were duly made in the newspapers- Ahmedabad editions on 11th September 2017. The Transferor companies published the same in Bangalore editions on 12th September 2017. An affidavit of service and publication dated 14th September 2017 confirming the same has been placed on record.



9. Heard Mrs. Swati Soparkar, learned advocate appearing for the petitioner companies. It has been submitted that representation in form of the affidavit dated 22nd July 2017 has been received from the Regional Director for the petitioner companies. The said representation contains no adverse observations with regard to the scheme. Vide Para 2 (a), (b), (c) and (d) it confirms the receipt of notice, nature of proposal, and consideration as confirmed by the Chartered Accountant as well as Rationale of the proposed arrangement. Vide para 2 (e) it is pointed out that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director vide para 2 (f) has confirmed that he has no other observation/submission and that the proposed Scheme of Arrangement is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

10. In response to the Notice of the petition served upon the Office of the Official Liquidator for the Transferor companies, representations dated 28th July 2017 have been filed by the Official Liquidator. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the affairs of the Transferor Companies have been conducted within their respective object clause and the same have not been conducted in any manner prejudicial to the interest of their members or public interest and, hence, the petitioner transferor companies may be dissolved without following the process of winding up.

However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Companies and not to dispose of the same without prior permission of the Central Govt. as required under section 239 of the Companies Act, 2013. It is hereby further directed that even after the Scheme is sanctioned, the Transferor companies shall comply with all the applicable provisions of law and shall not be absolved from any of their statutory liability.

11. Representation dated 25th July 2017 has been filed on 31st July 2017 with this Tribunal by the Dy. Commissioner of Income Tax, Circle-1 (1) (1), which is the assessing authority for the petitioner companies. An Additional affidavit dated 18th September 2017 has been filed on behalf of the petitioner companies with their submissions with regard to the observations made by the said Tax authority.

(i) The observation vide Para 2 confirms the jurisdiction for the petitioner companies and further confirms submission of the requisite returns by the Petitioner Companies.

(ii) The observation made vide para 3 pertains to the liability of the Transferee Company, viz. Anveshan Textile Limited, for the

demand, if any, that may be raised in future in case of the two Transferor Companies, viz. Arvind Fashion Brands Limited and Arvind Sports Lifestyle Limited. It is also further observed that the calculation of unabsorbed depreciation, carried forward business losses/other losses, value of stock on date of amalgamation etc. will be undertaken as per the Income Tax Act and Rules applicable at the time of amalgamation. In this regard, it has been submitted that vide Clause 13.2 of the Scheme, it is clearly provided that all tax liabilities of AFBL and ASLL shall be the liabilities of the Anveshan Textile Limited, the Transferee Company. It is also further submitted that all the calculations pertaining to unabsorbed depreciation, carried forward business losses/other losses, value of stock on date of amalgamation etc. will be undertaken as per the Income Tax Act and Rules, applicable at the time of amalgamation.

(iii) The observation made by the said representation further states that the Petitioner Transferee Company will be solely liable for any demand already created or become payable due to any of the proceedings related to Income Tax department in future for outstanding demand prior to amalgamation in respect of the Transferor Companies is also confirmed by the Petitioner Transferee Company. However, the Petitioner Companies vide their affidavits dated 18th September 2017 have clarified that the later part of the said observation making the Directors of the Transferee Company viz. Anveshan Textile Limited for the

liability of the Transferor Companies, is legally impermissible as they cannot be made responsible in their personal capacities for such tax demands or outstanding dues of the Transferor Companies. Even the directors of the Transferor Companies, if there would have been no such amalgamation, are not personally liable for the said liability. It has been submitted that the said observation is in violation of the provisions of the Income Tax Act. Section 179 of the said Act clearly provides that it is applicable only in case of the Directors of a Private Limited Company in Liquidation. It has been pointed out that the two Transferor Companies as well as the Transferee Company are public limited companies and, hence, the provisions of section 179 of the said Act are not applicable to any of these companies and the Directors of the Transferee Company cannot be made responsible for any outstanding dues or demands of income tax.

(iv) Section 179 of the Income Tax Act reads as follows: -

“179. (1)[Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), where any tax due from a private company in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company] cannot be recovered, then every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his party in relation to the affairs of the company.

[(2) Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-

section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.]

[Explanation :- For the purpose of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.]"

(v) Sub-section (1) of Section 179 of the Income Tax Act made the directors of a private company liable for the tax dues of the previous years also when he was a director of the private company. Sub-section (2) of Section 179 deals with the case of a private company converted into a public company. In the case of a private company converted into a public company, where tax assessed in respect of income of any previous year during which such company was a private company cannot be recovered, then notwithstanding anything contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of income of such private company assessable for any assessment year commencing before 1st day of April, 1962.

(vi) In the case on hand, both the transferor and transferee companies are public companies from the beginning. The observation of the Regional Director is that the directors of the transferee company are personally liable for the income tax dues of the transferor company. The contention of the learned counsel for the petitioners is that such a course is impermissible in view of Section 179 of the Income Tax Act. In support of her contention

she relied upon two decisions of a Division Bench of the Honourable High Court of Gujarat, viz (i) *Padmashi Devji Vithalani v. Commissioner of Income Tax* and (ii) *Dhaval N. Patel v. Commissioner of Income Tax, Ahmedabad -IV*, both reported in (2014) 44 *Taxmann.com* 231 and 211 (Gujarat), respectively. In the decision in *Padmashi Devji Vithalani*, it is held that when a director joined a public company after it is converted into a public company, he is not liable for the tax due from the private company before its conversion to public company. In the decision in *Dhaval N. Patel*, it is held that directors of a public company are not personally liable for the tax dues. Both the companies in this case are corporate bodies, being independent entities enjoying existence independent of its directors. The assets of the companies are distinct and separate and distinct from those of its members. Unless the concept of piercing corporate veil is applied by the courts depending upon various situations, the statute, i.e. Section 179 of the Income Tax Act, gives protection to directors of a public limited company from personally liability for the income tax dues. In the case on hand, the facts do not warrant the concept of piercing of corporate veil. The corporate veil can be pierced or cracked only if it is found that a complex web has been created only with a view to defraud the revenue interest of the State. If it is a case of a corporate entity only to create a smoke screen to defraud the revenue, then the corporate veil can be pierced. As already said, both the companies are public companies doing business for several years

in fabrics, clothes, etc. Therefore, the corporate bodies in this case do not come within a situation where a corporate veil can be pierced. In view of Section 179 of the Income Tax Act and the above said two decisions and as the facts do not warrant piercing of corporate veil, this Tribunal is of the view that the directors of the transferee company are not personally liable for the tax dues from the transferor company.

12. Since there are no adverse observations from the other regulatory authorities, the petitioners have chosen not to file any reply. No representation has been received from any other Regulatory Authority.

13. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of Chartered Accountant dated 25th April 2017, confirming that the accounting treatment envisaged under the Scheme of Arrangement in the books of the Transferee Company is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013. The same have been placed on record as Annexure-'F' to the petition of the Transferee Company, viz. CP (CAA) 102 of 2017.

14. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on

record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The proposed Scheme of Arrangement appears to be genuine and bona fide and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

15. As a result, the petitions being C P (CAA) No. 93 and 102 of 2017 are hereby allowed. The Scheme which is at Annexure- 'C' to both the petitions is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders, Secured and unsecured creditors and all concerned under the scheme. It is also declared that the Transferor Companies viz. Arvind Fashion Brands Limited and Arvind Sports Lifestyle Limited shall stand dissolved without winding up.

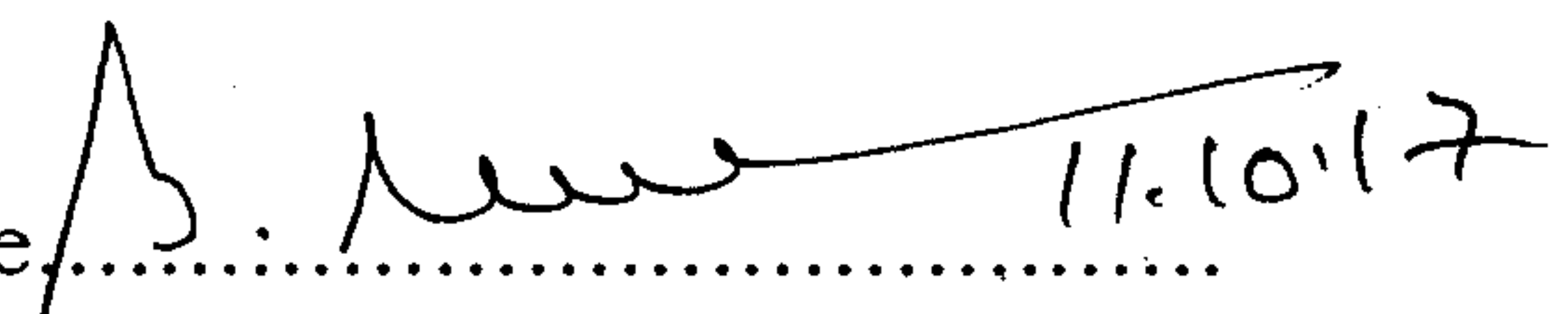
16. The fees of the Official Liquidator are quantified at Rs. 10,000/-each only in respect of the Transferor Companies. The said fees to the Official Liquidator shall be paid by the Transferee Company.

17. Filing and issuance of drawn up order is hereby 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 authenticated copy of this order along with Scheme immediately.

18. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Transferor companies as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

19. The Petitioner companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

20. These Company Petitions are disposed of accordingly.

Signature..... 11.10.17
[Bikki Raveendra Babu, Member (J)]

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