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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 97/NCLT/AHM/2017
c.w. CA(CAA) No. 48/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 13.10.2017**

Name of the Company: Mahadev Infrastructure 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. | SHRI NAVIN PAHWA
WITH | SA ADV | PETITIONER | Natasha. |
| 2. | NATASHA SUTARIA
FOR
THAKKAR & PAHWA, ADVS. | ADV | | |

ORDER

Learned Senior Advocate Mr. Navin Pahwa with Learned Advocate Ms. Natasha Sutaria present for Petitioner.

Common Order pronounced in open Court. Vide Separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 13th day of October, 2017.

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

CP(CAA) No.97/NCLT/AHM/2017

With

CP(CAA) No.98/NCLT/AHM/2017

In the matter of :-

Mahadev Infrastructure private Limited
A company having its registered office at
202, Second Floor, Rajkamal 1,
Plot No. 348, Ward 12/B,
Gandhidham – 370 201 (Gujarat)

...Petitioner of CP (CAA) No. 97 of 2017
(Transferor Company)

AND

Swayam Shipping Services Private Limited
A company having its registered office at
Suite 1010, Level 10 “Pinnacle”,
Corporate Road, Prahalad Nagar,
Ahmedabad – 380015 (Gujarat).

...Petitioner of CP (CAA) No.98 of 2017
(Transferee Company)

Order delivered on 13th October, 2017

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

Appearance:

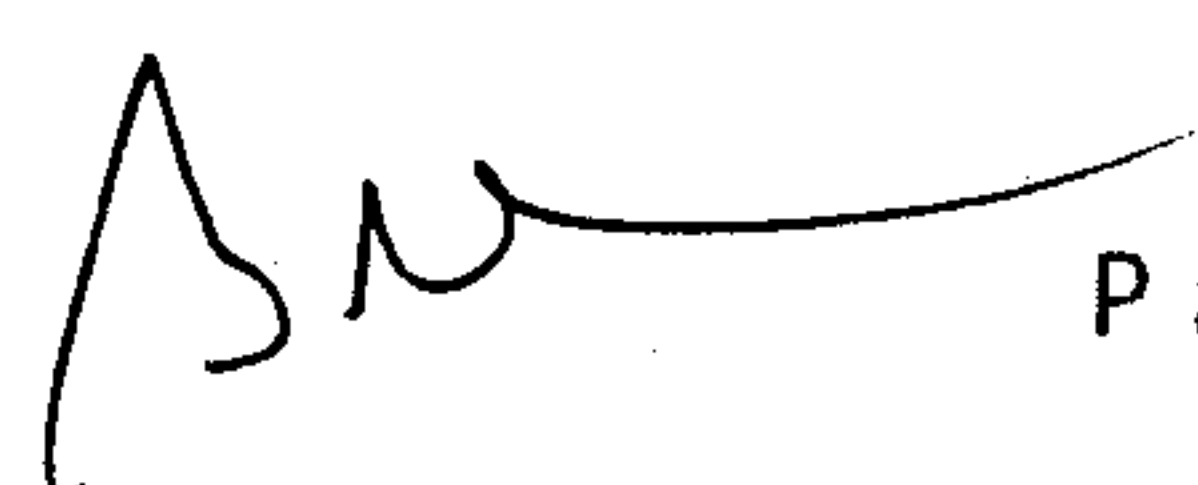
Mr. Navin Pahwa, Senior Advocate with Ms. Natasha Sutaria, Advocate for
M/s Thakkar & Pahwa, Advocates the Petitioner Companies.

COMMON ORDER

1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Arrangement in the nature of amalgamation of Mahadev Infrastructure Private Limited (Transferor Company) with Swayam Shipping Services Private Limited (Transferee Company) [“Scheme” for short.]

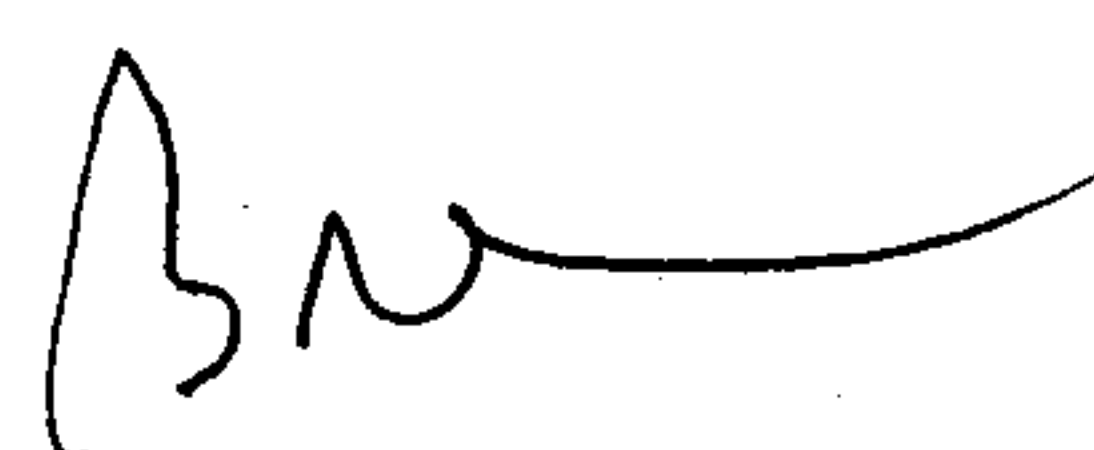
2. The petitioner of CP(CAA) No.97/NCLT/AHM/2017, i.e. Mahadev Infrastructure private Limited had filed CA(CAA) No.48/NCLT/AHM/2017 before this Tribunal, seeking dispensation of meetings of equity shareholders and unsecured creditors of the applicant transferor company for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme. It was stated by the Company that there were no secured creditors of the company. This Tribunal vide order dated 14.6.2017, issued directions dispensing with the meeting of Unsecured Creditors of the petitioner-company. So far as the Equity Shareholders were concerned, this Tribunal issued directions for convening and holding of the meeting of the Equity Shareholders of the petitioner transferor company. This Tribunal also directed publication of advertisements in local dailies viz. 'Indian Express' in English language and 'Sandesh' in vernacular language, having circulation in Ahmedabad. This Tribunal further directed issuance of notices to Regional Director, Registrar of Companies, Income Tax Authority and Official Liquidator stating that the representation, if any, to be made by them, be made within a period of 30 days from the date of receipt of such notice.

3. In pursuance to the order dated 14.6.2017, the meeting of Equity Shareholders of the said Company was duly convened and held on 28.7.2017 at 1:00 pm at 202, 2nd Floor, Rajkamal-1, Plot



NO.348, Ward No.12-B, Ganadhidham-370201. As per the Chairman's Report, the Scheme has been approved unanimously by the Equity Shareholders of the Company. The petitioner company also published notices in the local dailies viz. 'Indian Express' in English language and 'Sandesh' in vernacular language, having circulation in Ahmedabad. The petitioner also sent notices to the statutory authorities as per the directions contained in the order dated 14.6.2017.

4. The petitioner of CP(CAA) No.98/NCLT/AHM/2017, i.e. Swayam Shipping Services Private Limited had filed CA(CAA) No.49/NCLT/AHM/2017 before this Tribunal, seeking directions for dispensation of meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the said Company for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme. This Tribunal vide order dated 14.6.2017, dispensed with meeting of the Equity Shareholders of the petitioner transferee company. However, this Tribunal, by the said order, issued directions for convening and holding of meetings of Secured Creditors and Unsecured Creditors. This Tribunal also directed publication of advertisements in local dailies viz. 'Indian Express' in English language and 'Sandesh' in vernacular language, having circulation in Ahmedabad. This Tribunal further directed issuance of notices to Regional Director, Registrar of Companies and Income Tax Authority stating that the representation, if any,



to be made by them, should be made within a period of 30 days from the date of receipt of such notice.

5. In pursuance of the order dated 14.6.2017, meetings of Secured Creditors and Unsecured Creditors of the said Company were duly convened and held on 28.7.2017 at 11:00 am and 12:00 noon, respectively, at 202, 2nd Floor, Rajkamal-1, Plot NO.348, Ward No.12-B, Ganadhidham-370201. As per the Chairman's Reports, the Scheme has been approved unanimously by the Secured Creditors and the Unsecured Creditors of the Company. The petitioner company also published notices in the local dailies viz. 'Indian Express' in English language and 'Sandesh' in vernacular language, having circulation in Ahmedabad. The petitioner also sent notices to the statutory authorities as per the directions contained in the order dated 14.6.2017.

6. Pursuant to the orders dated 14.6.2017 passed in CA (CAA) Nos. 48 and 49/NCLT/AHM/2017, the Official Liquidator filed a representation dated 26th July, 2017 and the Regional Director filed a common representation dated 28.7.2017.

7. The petitioners, thereafter, filed the present Petitions, being CP(CAA) Nos. 97/NCLT/AHM/2017 and 98/NCLT/AHM/2017, before this Tribunal seeking sanction of the Scheme.

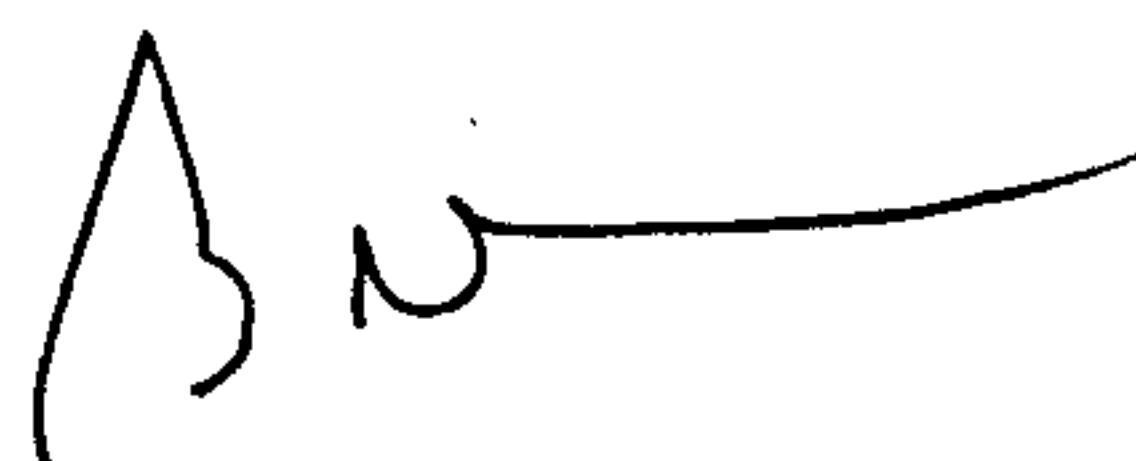
8. This Tribunal, by its separate orders, dated 29.8.2017 admitted the aforesaid petitions and directed issuance of notices

to Regional Director, Registrar of Companies and Official Liquidator (in case of Transferor Company) informing the date of hearing. The Tribunal also directed publication of notice of hearing of the petitions in the English Daily "Indian Express" and Gujarati Daily "Sandesh" having circulation in Ahmedabad not less than 10 days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing.

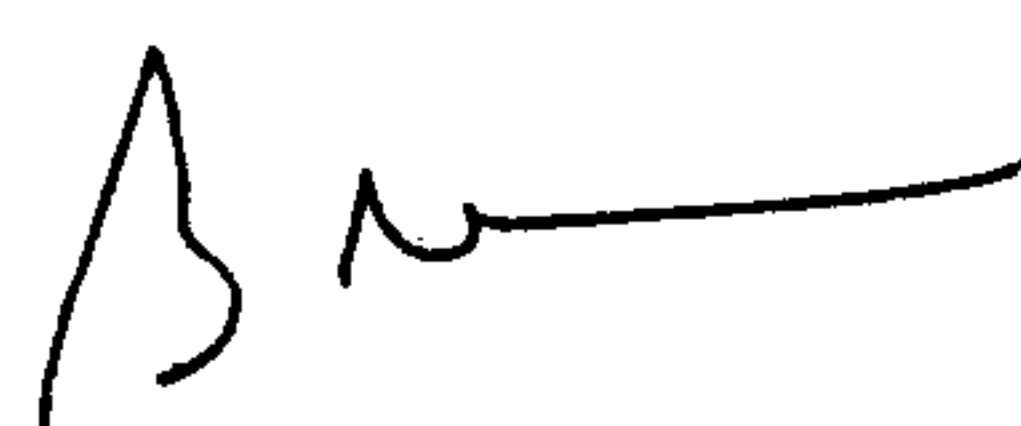
9. Pursuant to the order dated 29.8.2017 passed by the Tribunal, the petitioner- companies published the notice of hearing of the petitions in the English Daily "Indian Express" and Gujarati Daily "Sandesh" having circulation in Ahmedabad. The notices of hearing were also served upon the statutory authorities.

10. In response to the common report of Regional Director dated 28.7.2017, director of the petitioner Transferee Company has filed reply dated 27.9.2017. Likewise, in response to the representation of the Official Liquidator, the authorized signatory of the petitioner transferor company has filed a reply dated 27.09.2017.

11. Heard learned Senior Advocate, Mr. Pahwa, with Ms. Natasha Sutaria, Advocate, for M/s Thakkar & Pahwa, Advocates for the petitioner companies.



12. In response to the observation made by Regional Director in paragraph 2(e) of the representation, it is stated in the reply filed by the petitioner transferee company that AS-15 contemplates making provision in the books of account of the company for the retirement benefits, such as gratuity and leave encashment for the employees. So far as provision for gratuity is concerned, the petitioner Transferee Company has obtained an insurance policy which covers the amount of gratuity payable to each of the employees of the Company. The petitioner has obtained Master Policy No. GG/CA/708273 from Life Insurance Corporation of India which is a group insurance policy to cover the amount of gratuity. The scheme is known as Employee Group Gratuity-cum-Life Assurance (Cash Accumulation) Scheme. Every year, the company calculates the amount of gratuity payable to the employee based on completed years of service. The total liability of gratuity is the sum assured under the LIC Policy. The renewal premium is based on the sum assured. Accordingly, instead of making provision in the books for the future liability of gratuity, the Company has taken the policy and is paying premium every year at the time of renewal. The gratuity is payable by the LIC on the death or on the event of permanent incapacity of the employee or on the retirement of the employee. The petitioner company has thus made compliance of AS-15. So far as provision with regard to leave encashment is concerned, it is submitted by the Company that every employee is eligible to avail 36 earned leaves every year. If an employee avails less than



36 leaves, the employee is entitled to payment in cash for his earned but non-availed leave on his retirement or at any time when the employee chooses to exercise the option of payment. However, as a matter of fact, since incorporation of the company in the year 2005, all the employees, in fact, availed the entire earned leave. Even otherwise, as the option to avail encashment benefit can be availed at any time during the tenure of service, it is not possible to quantify the liability or to make provision thereof. The company is making appropriate clarification in the notes to accounts and in the Board Report every year. In light of the above, this Tribunal is of the view that the observation made by the Regional Director stands satisfied.

13. The Regional Director has stated that, as per the report of the Registrar of Companies, Gujarat, there are no complaints against the petitioner companies and 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.

14. In the representation filed by the Official Liquidator, in paragraph 14, it is observed that the petitioner company may be directed to preserve its books of accounts, papers and records and shall not dispose of the same without prior permission of the Central Government as per the provisions of Section 239 of the Companies Act, 2013. In response to the observation, it is

submitted in the reply filed by the petitioner company that the petitioner company shall preserve its books of accounts, papers and records and shall not dispose them of without prior permission of the Central Government as required under Section 239 of the Act. In response to the observation made in paragraph 15, the petitioner company has stated that the petitioner company shall ensure statutory compliance of all the applicable laws and it is understood that upon sanctioning of the scheme, it shall not be absolved from any of its statutory liability, if any, in any manner.

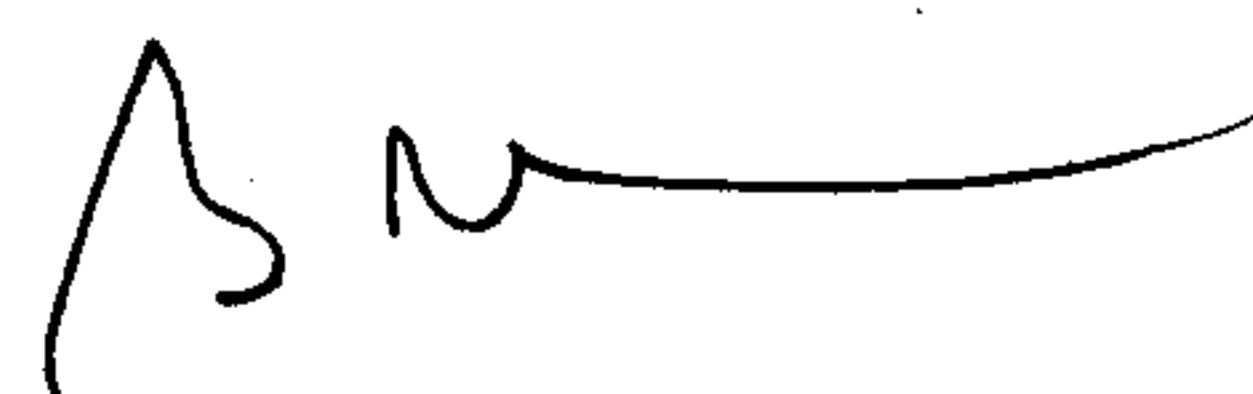
15. In response to the observations made in paragraph 17 of the representation of the Official Liquidator, it is stated in paragraph 5 of the reply that the loan is availed by Swayam Shipping Services Private Limited, the Transferee Company. The Transferee Company is the holding company of the Transferor Company. The charge is created by the Transferor Company for securing the repayment of the loan availed by the Transferee Company. As admittedly the loan is availed by the Transferee Company, HDFC Bank is the secured lender of the Transferee Company. The HDFC Bank has given its consent to the Scheme in the meeting ordered by this Tribunal. It is stated that even otherwise, upon sanctioning of the Scheme, the assets of the Transferor Company which is the subsidiary company of the Transferee Company, will be transferred to the Transferee Company. In the circumstance, the HDFC Bank, in any case, would continue to have the charge over the assets, which at

present are owned by the Transferor Company. HDFC Bank can even proceed against the assets of Transferor Company even after merger. In light of the above, this Tribunal is of the view that the observations made by the Official Liquidator stand satisfied.

16. So far as the accounting treatment envisaged in the Scheme is concerned, the petitioner companies have produced copies of certificates issued by their Statutory Auditors certifying that the accounting treatment envisaged in the Scheme is in conformity with Accounting Standard 14 "Accounting for Amalgamations" as prescribed under Section 133 of the Companies Act, 2013.

17. 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.

18. In the result, these petitions are allowed. The Scheme of Arrangement as placed at Annexure-D to the petitions is hereby sanctioned and it is declared that the same shall be binding on the petitioner-companies, namely, Mahadev Infrastructure private Limited and Swayam Shipping Services Private Limited, their shareholders, creditors and all concerned under the Scheme. The petitioner transferor company, viz. Mahadev



Infrastructure Private Limited, shall stand dissolved without the process of winding up.

19. It is ordered that the Transferor Company shall not dispose of or destroy its books of accounts and other connected papers without prior consent of the Central Government as per provisions of Section 239 of the Companies Act, 2013 and shall preserve the same.

20. It is also ordered that the Transferor Company shall ensure statutory compliance of all applicable laws and it shall not be absolved from its statutory liabilities in any manner.

21. It is further ordered that the petitioner companies shall comply with Rule 17(3) 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 involved.

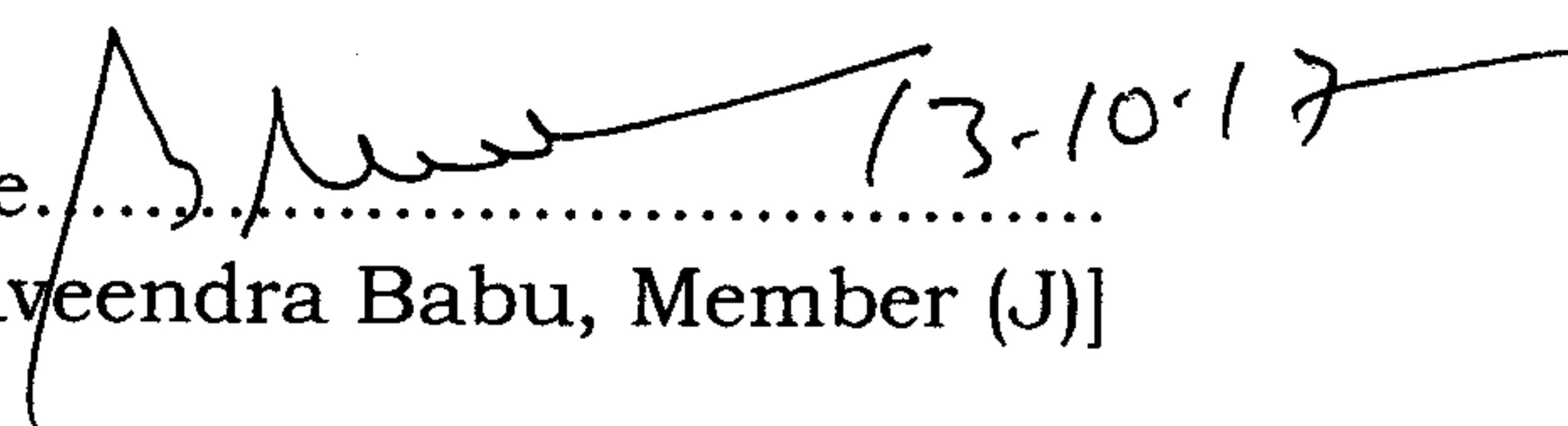
22. The fees of the Official Liquidator are quantified at Rs.10,000/- in respect of the Transferor Company and the said fees shall be paid by the Transferee Company.

23. 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.

24. These Company Petitions are disposed of accordingly.

Signature.....13-10-17
[Bikki Raveendra Babu, Member (J)]

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