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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 58/NCLT/AHM/2017
With CA(CAA) No. 10/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 27.10.2017**

Name of the Company: Shreenathji Vastucon Pvt. Ltd.

Section of the Companies Act: Sections 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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ORDER

None present for Petitioner.

Common Order pronounced in open court. Vide separate sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 27th day of October, 2017.

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

CP(CAA) No.58 of 2017

With

CP(CAA) No.59 of 2017

In the matter of :-

1. Shreenathji Vastucon Pvt. Ltd.,
A company incorporated under
the provisions of Companies Act 1956,
Having its registered Office at
9, Sahjanand Complex, Opposite
Chamak Chuna, N.H. - 8,
Thakkarbapa Nagar,
Ahmedabad - 382350. ... Petitioner of CP (CAA) 58/2017
(Transferor Company)

AND

2. Bhanderi Corporation Ltd.
A company incorporated under
the provisions of Companies Act 1956,
Having its registered Office at
B/9, B/10, Jabuka Complex,
Near Bajrang Ashram,
Below Vikas School,
N.H. - 8, Thakkarbapa Nagar,
Ahmedabad - 382350. ... Petitioner of CP (CAA) 59/2017
(Transferee Company)

Order delivered on 27th October, 2017

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

Appearance:

Mr. Mohit Gupta, Advocate, with Mr. Karan Valecha, Advocate, for M/s A. R. Gupta & Associates, Advocates for the petitioner companies.

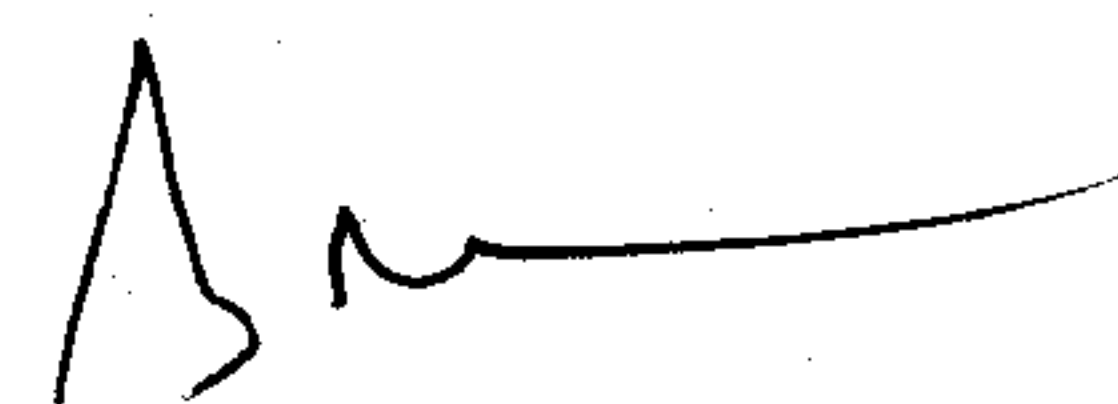
COMMON ORDER

1. These petitions under Section 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Arrangement in the nature of Amalgamation of Bileshwar

infrastructure Pvt. Ltd., Brahmani Buildcon Pvt. Ltd., Dharnidhar Construwell India Pvt. Ltd., Shreenathji Vastucon Pvt. Ltd. (petitioner transferor company No.4) and Tulsi Infradevelopers Pvt. Ltd. with Bhanderi Corporation Ltd (petitioner transferee company) and their respective shareholders and creditors (Scheme).

2. It is stated that the registered offices of the transferor companies, i.e. Bileshwar infrastructure Pvt. Ltd., Brahmani Buildcon Pvt. Ltd., Dharnidhar Construwell India Pvt. Ltd. and Tulsi Infradevelopers Pvt. Ltd are situated in Mumbai and hence their respective petitions have been filed before the National Company Law Tribunal, Bombay bench. The abovementioned petitions are pending before the concerned Tribunal.

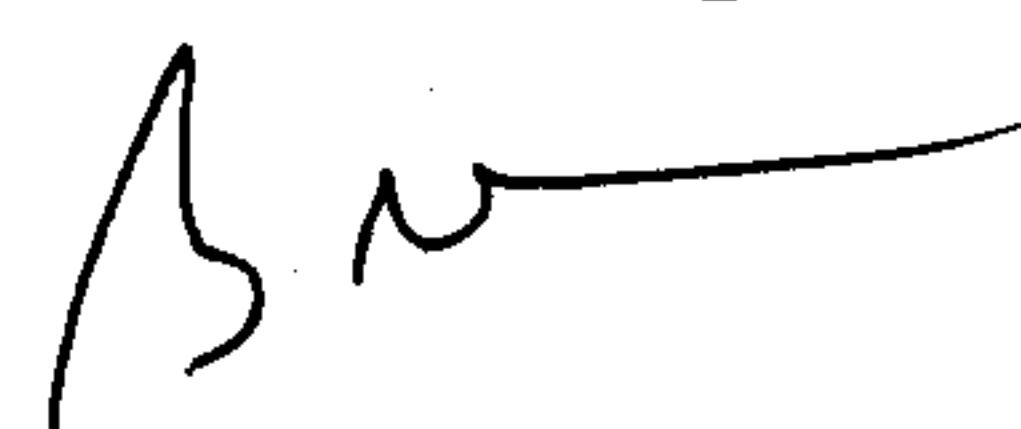
3. The petitioner transferor company No.4 i.e. Shreenathji Vastucon Pvt. Ltd., filed an application before this Tribunal, being CA(CAA) No. 10/NCLT/AHM/2017, seeking dispensation of the meetings of Equity Shareholders and Unsecured Creditors of the said Company. This Tribunal vide order dated 18th April, 2017, dispensed with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of the petitioner transferor company No.4 in view of the consent letters given by the Equity Shareholders and consent affidavits given by the Unsecured Creditors of the petitioner company. This



Tribunal also noted that the petitioner company has no secured creditors.

4. The petitioner transferee company, i.e. Bhanderi Corporation Ltd., filed an application before this Tribunal, being CA(CAA) No. 11/NCLT/AHM/2017, seeking dispensation of the meetings of the Equity Shareholders and Unsecured Creditors of the said company. The Tribunal vide order dated 18th April, 2017, dispensed with the convening and holding of the meeting of the Equity Shareholders in view of the consent letters given by them and directed convening and holding of the meeting of the Unsecured Creditors on 5th June, 2017 at the registered office of the company. This Tribunal also noted that the petitioner company has no secured creditors.

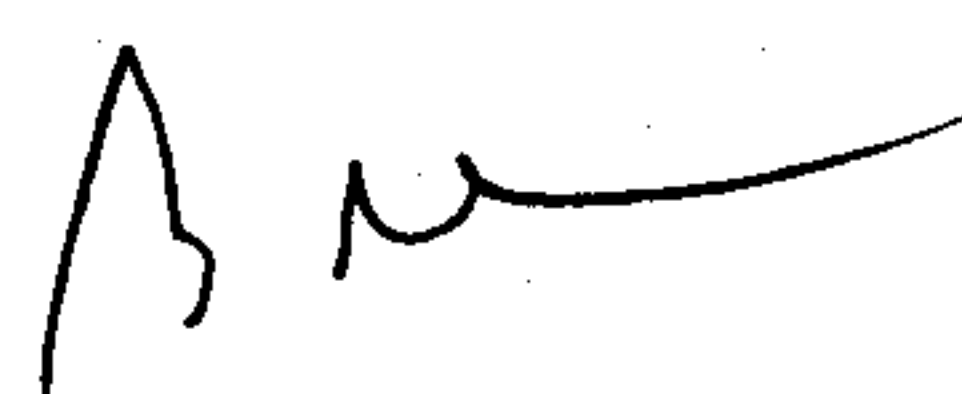
5. Vide the aforesaid order dated 18th April, 2017, this Tribunal also directed the present petitioner companies to send notice in Form CAA3 along with a copy of the Scheme of Amalgamation and Explanatory statement to statutory authorities namely, (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the concerned Income Tax authorities (iv) the Reserve Bank of India (only in case of transferee company), (v) the Competition Commission of India (only in case of transferor company) and (vi) the Official Liquidator (only in case of the transferor company) asking them to make representation(s), if



any, in case they desired to make, within 30 days from the date of receipt of notice, to the Tribunal. It was also stated in the said orders that in case no representation was received by this Tribunal within the stipulated period of 30 days, it would be presumed that the authorities have no representation to make on the proposed scheme of Amalgamation.

6. Pursuant to the aforesaid order dated 18th April 2017, the petitioner transferor company had duly served the notices on the concerned statutory authorities on 9th May, 2017. The petitioner transferor company has also filed proof of service of notice. The petitioner transferee company had duly served the notices to Registrar of Companies, Regional Director North Western Region and Reserve Bank of India on 11th May 2017 and notices to Income tax authority and Competition of Commission of India were sent on 11th May 2017 by way of Registered A.D. The petitioner transferee company has also filed the requisite proof.

7. Notice was sent individually to the Unsecured Creditors of the petitioner of CP (CAA) No. 59 of 2017, i.e. Bhanderi Corporation Ltd., pursuant to the order dated 18th April 2017, together with a copy of the scheme of amalgamation, a copy of statement of explanation required to be furnished under section 230-232 read with section 102 of the Companies Act, 2013 and prescribed Form of Proxy, amongst others. Shri Mukeshbhai Balubhai Patel, the Chairperson of the meeting has already filed



the requisite affidavit on 23rd May, 2017 in respect of service of notices to the Unsecured Creditors of the said company. Accordingly, the meeting of unsecured creditors was convened on 5th June, 2017 at 3:00 PM at the registered office of the petitioner transferee company. The arrangement embodied in the scheme was approved by more than the requisite majority i.e. by 99.45% of the Unsecured Creditors either in person or by proxy through voting at the venue.

8. The Petitioner Companies thereafter on 15th June, 2017, filed the present petitions seeking sanction of the Scheme. This Tribunal by its order dated 19th June, 2017, admitted these petitions and ordered that notice of hearing of the petitions shall be advertised in English Daily Newspaper, "Indian Express" Ahmedabad edition and Gujarati Daily Newspaper, "Sandesh Daily" Ahmedabad edition not less than ten days before the date fixed for hearing, calling for objections, if any, of the public at large on or before the date of hearing. This Tribunal also directed the petitioner company of CP (CAA) No. 59 of 2017 i.e. the transferee company, to issue notice to the Competition Commission of India informing the date of hearing of the petitions.

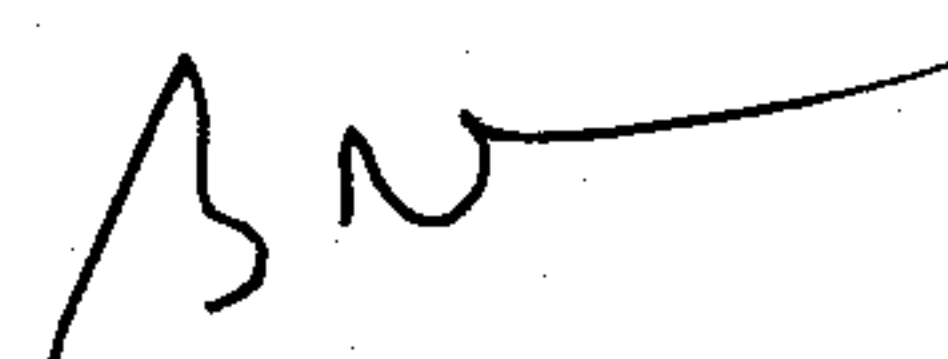
9. Accordingly, the petitioner companies published notice of hearing of CP (CAA) Nos. 58 and 59 of 2017, in English Daily Newspaper, "Indian Express" Ahmedabad edition and Gujarati

Daily Newspaper, "Sandesh Daily" Ahmedabad edition on 1st August 2017. Notices of hearing of the petitions was also served upon the statutory authority namely, the Competition Commission of India and affidavits of service and publication dated 4th August, 2017 have been filed by the Director of the petitioner companies.

10. It is also stated in the respective Company petitions on affidavit that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting standards prescribed under Section 133 of the Companies Act, 2013. The Petitioner Companies have also produced certificates of Statutory Auditors in their respective petitions.

11. In response to the notice to the Competition Commission of India, the Competition Commission of India filed representation dated 30th June, 2017. The Official Liquidator filed a representation dated 28th August, 2017. However, no representation has been received from any other statutory authorities. Similarly, pursuant to the publication of notice of hearing of the petitions in the newspapers, no objection to the Scheme has received from the public at large.

12. This Tribunal, by order dated 30th August 2017, ordered the petitioner company of CP (CAA) No. 58 of 2017, i.e. transferor company No.4, to again issue notice to the official liquidator and the said notice was duly served on 4th September.

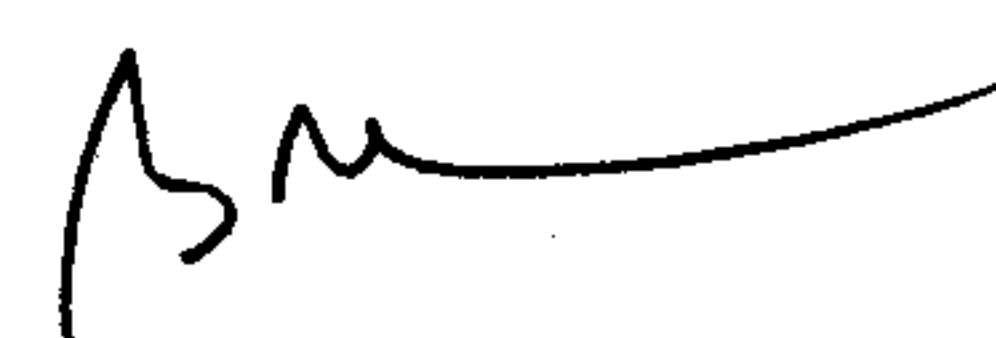


13. Heard learned advocate Mr. Mohit Gupta with learned advocate Karan Valecha for A.R. Gupta & Associates, Advocates for petitioner companies.

14. The Competition Commission of India has, in the representation dated 30th June, 2017, stated that this Tribunal may seek an undertaking from the Petitioner Companies that the Scheme of Amalgamation does not require its approval. Accordingly, an affidavit dated 4th August 2017, was filed by the director of petitioner company that the threshold limit as prescribed under the Competition Commission Act, 2002 is not triggered by the said scheme of Amalgamation and, therefore, approval of Competition Commission of India is not required.

15. The petitioners have submitted that the petitioners have not filed any reply to the representation of the Official Liquidator as no adverse observations are made in the said representation.

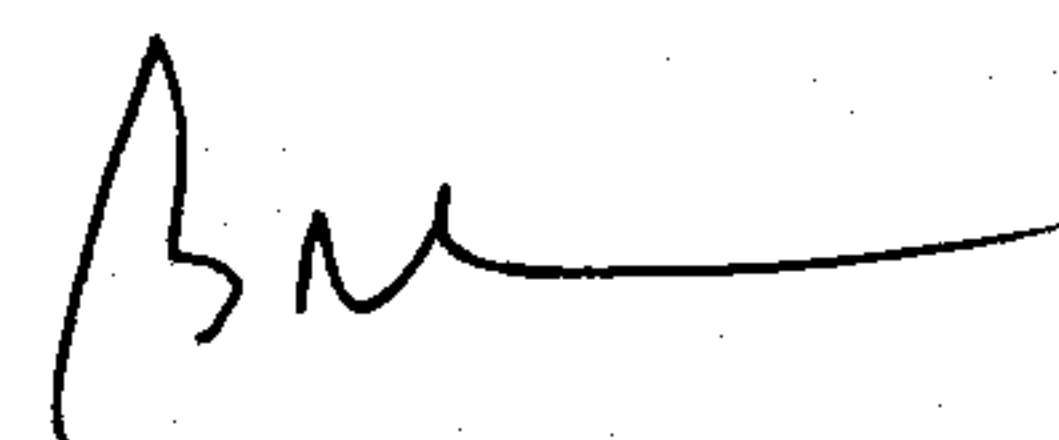
16. The Official Liquidator in paragraph 13 of the representation has requested the Tribunal to direct the petitioner transferor company to preserve its books of accounts, papers and records and shall not dispose of the same without prior permission of central Government as per the provisions of Section 239 of the Companies Act, 2013. The Petitioner Transferor Company undertakes to preserve its books of accounts, papers and records and shall not dispose them of



without the prior permission of the Central Government as per the provisions of Section 239 of the Companies Act, 2013.

17. In paragraph 14 of the representation, the Official Liquidator has requested the Tribunal to direct the Petitioner Transferor Company to ensure statutory compliance of all applicable laws and also on sanctioning of the Scheme, the petitioner company shall not be absolved from any of its statutory liability in any manner. The Petitioner Transferor 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 liabilities.

18. In paragraph 16 of the representation, the Official Liquidator has requested the Tribunal to direct the Petitioner Transferor Company to comply with Rule 17(3) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order if any for confirmation of the scheme in form No. INC-28 with the Registrar of Companies. The petitioner transferor company undertakes to comply with Rule 17(2) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of the Order of Confirmation of the Scheme in Form No. INC - 28 with the Registrar of Companies.

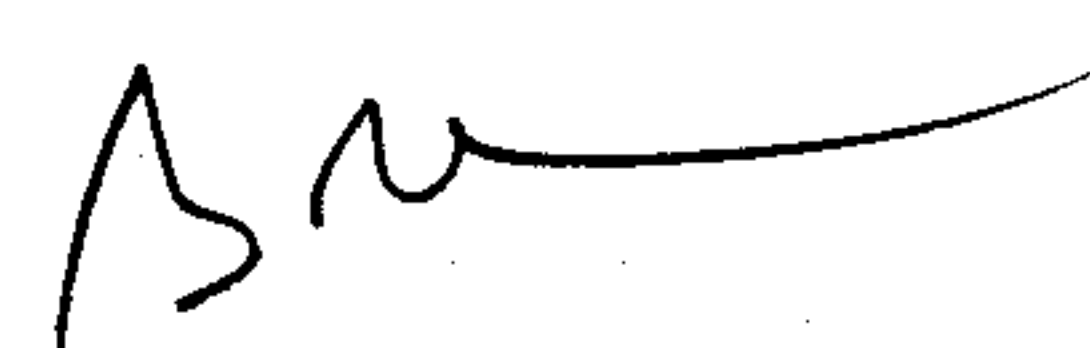


19. The Official Liquidator has further observed that the petitioner transferor companies may be dissolved without following the process of winding-up in terms of sub section 3(d) of Section 232 of the Companies Act, 2013.

20. 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 Section 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme is genuine and bona fide and in the interest of the shareholders and creditors.

21. In result, these petitions are allowed. The Scheme of Amalgamation which is at **Annexure C** to the petition filed by the petitioner transferee company and at **Annexure F** to the petition filed by the petitioner transferor company is hereby sanctioned and the prayers made in the respective Company petitions are hereby granted subject to sanction of the said Scheme of Amalgamation by Bombay Bench of National Company Law Tribunal in the proceedings undertaken before it by the Transferor Companies i.e. Bileshwar infrastructure Pvt. Ltd., Brahmani Buildcon Pvt. Ltd., Dharnidhar Construwell India Pvt. Ltd. and Tulsi Infradevelopers Pvt. Ltd.

22. It is ordered that the petitioner transferor company No.4 shall not dispose of or destroy its books of accounts and other



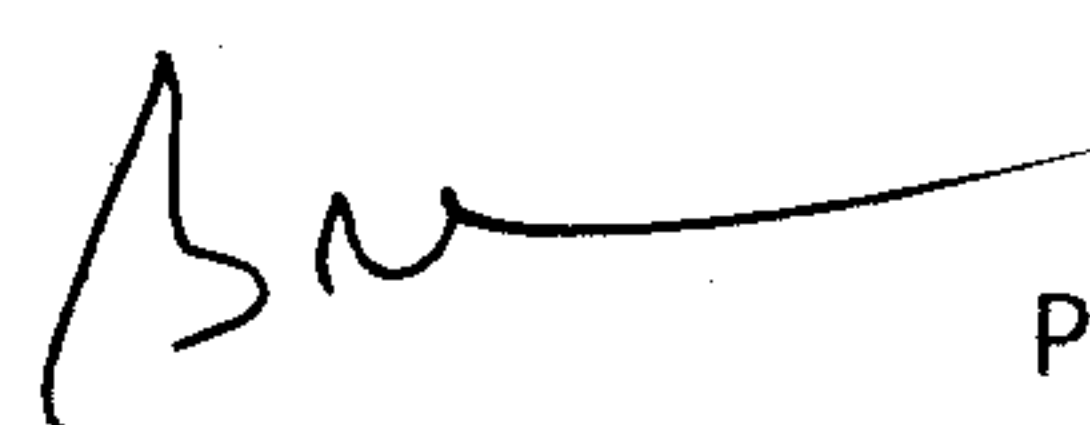
connected papers without prior consent of the Central Government as per provisions of Section 239 of the Companies Act, 2013 and shall preserve the same.

23. It is also ordered that the petitioner transferor company No.4 shall ensure statutory compliance of all applicable laws and it shall not be absolved from its statutory liabilities in any manner.

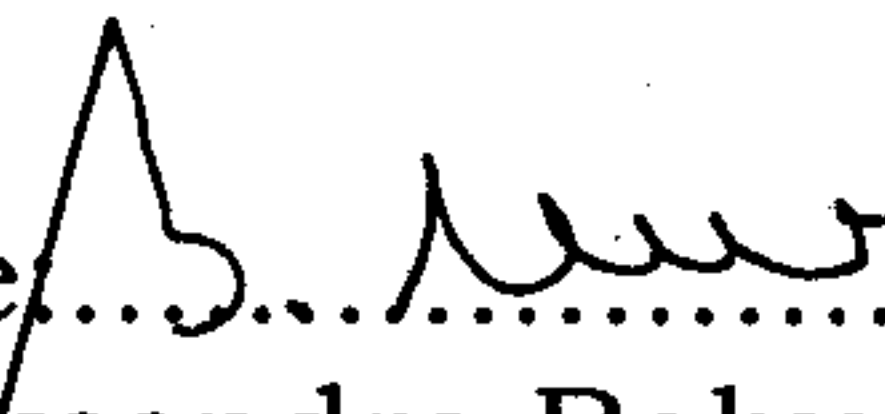
24. It is further ordered that the petitioner companies shall comply with Rule 17(3) of Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order, if any, for confirmation of the scheme in form INC-28 with the Registrar of Companies having jurisdiction over the petitioner companies involved.

25. The fees of Official Liquidator in respect of CP(CAA) No.58 of 2017 are quantified at Rs. 10,000/-. The said fees to the Official Liquidator shall be paid by the Transferee Company.

26. 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.



27. These company petitions are disposed of accordingly.

Signature.......... 27-10-17
[Bikki Rayeendra Babu, Member (J)]

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