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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 113/NCLT/AHM/2017
c.w. CA(CAA) No. 79/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 14.11.2017**

Name of the Company: Masibus Electronics Pvt. Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

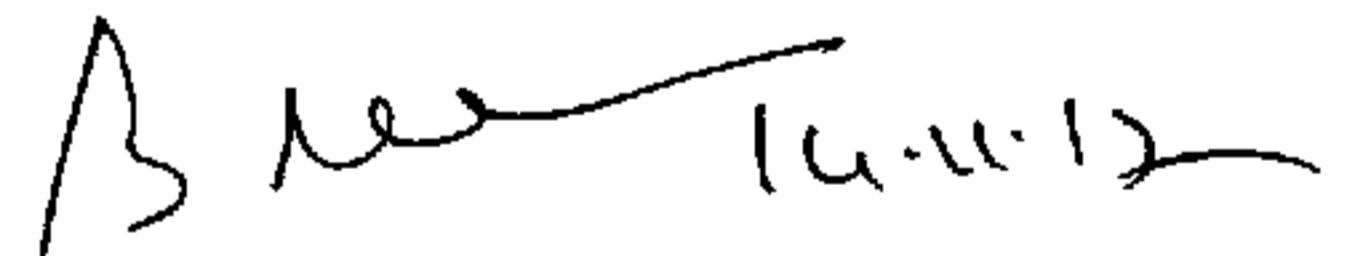
S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1. Vaibhavi K Parikh. } Advocates Petitioners
a.w. Kavankumar Mankad. }
2.

ORDER

Learned Advocate Ms. Vaibhavi Parikh with Learned Advocate Mr. Kavankumar Mankad present for Petitioner.

Common Order pronounced in open court. Vide separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 14th day of November, 2017.

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

CP(CAA) No.113/NCLT/AHM/2017

With

CP(CAA) No.114/NCLT/AHM/2017

In the matter of :-

1. Masibus Electronics Private Limited

A Company incorporated under the provisions of Companies Act, 1956 having its registered office at B-30, GIDC Electronic Estate, Sector 25, Gandhinagar - 382 044 In the State of Gujarat.

... Petitioner of C. P. (CAA) No. 113 of 2017
(Transferor Company)

AND

2. Masibus Automation and

Instrumentation Private Limited
A Company incorporated under the provisions of Companies Act, 1956 having its registered office at B-30, GIDC Electronic Estate, Sector 25, Gandhinagar - 382 044 In the State of Gujarat.

... Petitioner of C. P. (CAA) No. 114 of 2017
(Transferee Company)

Order delivered on 14th November, 2017

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

Appearance:

Ms. Vaibhavi Parikh with Mr. Kavankumar Mankad, Advocates 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 Arrangement in the nature of Amalgamation of Masibus Electronics Private Limited (Transferor Company) with Masibus

Automation and Instrumentation Private Limited (Transferee Company) and their respective shareholders and creditors ('Scheme' of short).

2. The Petitioner Transferor Company viz. Masibus Electronics Private Limited had filed an application before this Tribunal, being C.A. (CAA) 79/NCLT/AHM/2017 seeking dispensation of the meeting of the Equity Shareholders and requisite directions for holding and convening a meeting of Unsecured Creditors of the Petitioner Company. It was stated that there were no Secured Creditors of the Company. This Tribunal vide its order dated 12th July, 2017, dispensed with the meeting of Equity Shareholders of the Petitioner Company and issued directions for convening and holding meeting of Unsecured Creditors.

3. The Petitioner Transferee Company viz. Masibus Automation and Instrumentation Private Limited had filed an application before this Tribunal, being C.A. (CAA) 80/NCLT/AHM/2017, seeking dispensation of the meeting of the Equity Shareholders and Secured Creditors and requisite directions for convening and holding a meeting of Unsecured Creditors of the Petitioner Company. This Tribunal vide its order dated 12th July, 2017, dispensed with the meetings of Equity Shareholders and Secured Creditors of the Petitioner Company



and issued directions for convening and holding meeting of Unsecured Creditors.

4. The Petitioner Companies in compliance of the Order dated 12th July, 2017, sent individual Notices dated 24th July, 2017 to all the Unsecured Creditors together with a copy of the Scheme of Amalgamation, statement required under Section 232 read with Section 230 of the Act, Proxy Form and other documents required to be annexed therewith and/or forming part thereof, at their registered or last known addresses. The Petitioner Companies also published advertisement in newspapers "The Times of India" and "Divya Bhaskar", as directed by this Tribunal. Further, Notices were also sent individually to the (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, (iii) the Income-tax Authorities, (iv) the Reserve Bank of India and (v) the Official Liquidator in C.A. (CAA) 79/NCLT/AHM/2017 along with a copy of the required documents and disclosures.

5. On 28th August 2017, a meeting of the Unsecured Creditors of the Petitioner Transferor Company was duly convened at C - 6, Verna Industrial Estate, Phase 1 - A, Verna, Salcete - 403 722, Goa and a meeting of the Unsecured Creditors of the Petitioner Transferee Company was duly convened at the Registered Office of the Company at B - 30, GIDC Electronic

Estate, Sector 25, Gandhinagar – 382 044 in the State of Gujarat, and Voting at the said meetings was conducted in accordance with the directions contained in order dated 12th July, 2017 of this Tribunal and Rule 13 of the Rules. Reports of the said meetings have also been filed with the Registry of this Tribunal, by the Chairperson of the said Meetings on 4th September, 2017. From the Reports filed with this Tribunal, it emerges that the Scheme of Amalgamation was unanimously approved by the Unsecured Creditors of the Petitioner Companies.

6. Pursuant to the notice of this Tribunal, the Regional Director, North Western Region filed a common representation dated 24th August, 2017. Likewise, the Official Liquidator also filed representation dated 5th September, 2017.

7. The Petitioner Companies thereafter filed the present Company Petitions seeking sanction of the Scheme. This Tribunal vide order dated 13th October, 2017, while admitting the aforesaid Company Petitions, ordered that notice of hearing of the petitions to be advertised in the English Daily Newspaper “The Times of India” and Gujarati Daily Newspaper “Jai Hind”, both having circulation in Ahmedabad, not less than ten days before fixed date of hearing, calling for objections, if any, on or before the date of hearing. This Tribunal also ordered issuance of notice to (a) The Central Government, through the Regional Director, Gujarat; (b) The Registrar of Companies, Gujarat; (c)

The Reserve Bank of India and (d) the Official Liquidator for CP(CAA) No. 113/NCLT/AHM/2017 informing the date of hearing.

8. Accordingly, the Petitioner Companies published notice of hearing of both the petitions in English Daily, "Times of India" and Gujarati Daily, "Jai Hind" both Ahmedabad Editions on 19th October, 2017. Notice of hearing of the petitions were also served upon the statutory authorities namely, (i) the Central Government through the Regional Director; (ii) the Registrar of Companies, Ahmedabad, Gujarat; (iii) the Reserve Bank of India; and (iv) the Official Liquidator for CP(CAA) No. 113/NCLT/AHM/2017 and affidavit of service and publication dated 26th October, 2017 have been filed by the Director of the Petitioner Companies.

9. It is also stated in the Company Petitions on affidavit that the accounting treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. In support of their say, the Petitioner Companies have also produced certificate of the Chartered Accountant in their respective petitions.

10. In response to the notice served to the Income Tax Authorities, no representation has been received and/or filed by the Income Tax Authorities before this Tribunal. Similarly,

pursuant to the publication of notice of hearing of the petitions in the newspapers, no objection to the Scheme has been received from the public at large.

11. In response to the common representation filed by the Regional Director, the Petitioner Companies have dealt with the same in their respective petitions filed on 14th September, 2017. The Petitioner Transferor Company has dealt with the representation filed by the Official Liquidator vide its Petition filed on 14th September, 2017.

12. Heard learned Advocate Ms. Vaibhavi Parikh for the Petitioner Companies.

13. In Paragraph 2(e) of the common representation filed by the Regional Director, the Regional Director has stated that it is observed from the valuation report dated 10/03/2017 of M/s. A. K. Shah & Associates, Chartered Accountants, Ahmedabad regarding the Share Exchange Ratio that the address of the registered office of the company has been wrongly mentioned at Paragraph 4 of the said report as "Plot No. C-6, New Phase, Verna Industrial Estate, Verna, Salcete, Goa - 403 722". The Petitioner Companies in Paragraph 19(ii) of the respective petitions have submitted that an inadvertent error had crept in on the part of the Chartered Accountant while mentioning the address of the Registered Office of the Petitioner Transferor Company in

Paragraph No. 4 of the Valuation Report dated 10.03.2017. The Chartered Accountant of the Petitioner Companies has rectified the said mistake and Corrigendum dated 12th September, 2017 along with Valuation Report dated 10th March, 2017 are annexed at Annexure – H to the petition. This Tribunal is thus of the view that the observation made by the Regional Director in Paragraph 2(e) of the representation, stands satisfied.

14. In Paragraph 2(f) of the common representation filed by the Regional Director, the Regional Director has stated with respect to compliance by the Petitioner Transferee Company of the provisions of FEMA and RBI guidelines as equity shares of the Petitioner Transferee Company are held by one Non Resident Indian (NRI) namely Shri Krishnan Moorley Dharan. The Petitioner Companies in Paragraph 19(iii) of the respective petitions have submitted that they have complied with the provisions of FEMA and RBI guidelines with respect to 55713 number of equity shares of the Transferee Company being held by one NRI namely Shri Krishnan Moorley Dharan by annexing (a) Foreign Inward Remittance Certificate (FIRC) issued by Kotak Mahindra Bank Limited for the Foreign Direct Investment (FDI) which proves that FEMA guidelines are followed and (b) reporting of Foreign Direct Investment (FDI) and reporting of Advance Foreign Remittance (AFR) was made to the Reserve Bank of India (RBI), which reflects that RBI guidelines were also followed by the Transferee Company. It was also submitted that

after issuance of shares against FDI, it was also reported to RBI under FC-GPR declaring that the shares were issued to a foreign investor along with a declaration that the shares, which were issued on right basis to NRI, were in conformity with Regulation 6 of RBI Notification No. FEMA 20/2000-RB dated 03/05/2000, as amended from time to time. Proof of Submission to RBI on the website bearing reference nos. RA152444 and RG154087 is annexed as Annexure - J in the respective petitions. In light of the above, this Tribunal is of the view that the observation made by the Regional Director in Paragraph 2(f) of the representation, stands satisfied.

15. In Paragraph 2(g) of the common representation filed by the Regional Director, the Regional Director has stated that, as per the report of the Registrar of Companies dated 9th August, 2017, no complaints against the Petitioner Companies were received by the office of the Registrar of Companies including any complaint/representation against the Scheme of Arrangement.

16. It is also stated by the Regional Director in Paragraph 2(h) of the common representation that the proposed Scheme is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

17. In response to the notice to the Official Liquidator in CP (CAA) No. 113/NCLT/AHM/2017, the Official Liquidator filed his

representation dated 5th September, 2017. In Paragraph 12 of the report, the Official Liquidator has observed that it has been stated in the application that there are no Secured Creditors, but the MCA master data reflects the charge of Rs. 44,75,000/- with the date of creation as 02/06/2008, was created on immovable property. The Petitioner Transferor Company in Paragraph 20(i) of the petition has submitted that it is a fact that there is no Secured Creditor in the Petitioner Transferor Company. It is also submitted that the Petitioner Transferor Company has availed cash credit limit from HDFC Bank in the year 2008. It is also submitted that merely availing cash credit limit does not make the Bank a Secured Creditor of the Company. The same has been reflected in the Master Data of the Company and not in its Balance Sheet. If the Company had a Secured Creditor, then it would have reflected the said fact in the Audited Balance Sheet as on 31/03/2017 placed on record at Annexure - B of the petition. It is further submitted that since there was no utilization of the HDFC cash credit limit by the Petitioner Transferor Company for which charge is registered for Rs. 44.75 lakhs with the Registrar of Companies, the same is not reflected in the Balance Sheet of the Company. Therefore, as on date of submission of the list of Secured Creditors and Unsecured Creditors, viz. 20th May, 2017, before this Tribunal in CA(CAA) 79 of 2017, the HDFC Bank has not been shown as a Secured Creditor. The Petitioner Transferor Company mainly operates from its current account and uses its reserve and accumulated

balance instead of using the cash credit limit of HDFC Bank. It is further submitted that the Petitioner Transferor Company will be closing its HDFC Bank account after the sanction of the proposed Scheme as the Transferee Company is banking entirely with Kotak Mahindra Bank Limited and all payments will be taken care of by the Transferee Company after the proposed Scheme comes into effect. In light of the aforesaid, this Tribunal is of the view that the observations made by the Official Liquidator in his representation, stand satisfied.

18. With regard to the observation made by the Official Liquidator at Paragraph 13 of the report, in Paragraph 20(ii) of the petition, it is stated that the Petitioner Transferor Company undertakes 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 provision of Section 239 of the Companies Act, 2013.

19. In Paragraph 16 of the report, 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 be not absolved from any of its statutory liability in any manner. In reply given in Paragraph 20(iii) of the petition, the Petitioner Transferor Company has stated that the Petitioner Transferor Company ensures statutory compliance of all applicable laws

and that the Petitioner Transferor Company shall not be absolved from any of its statutory liability. However, it is observed that upon sanctioning of the Scheme, the Petitioner Transferor Company shall not be absolved from any of its statutory liability, in any manner.

20. In Paragraph 17 of the report, the Official Liquidator has observed that the Petitioner Transferor Company 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. It has also been observed that the Petitioner Transferor Company being dissolved, the fee if any paid by the Petitioner Transferor Company on its Authorized Share Capital shall be set-off against any fees payable by the Petitioner Transferee Company on its Authorized Capital subsequent to the amalgamation in terms of sub Section 3(i) of Section 232 of the Companies Act, 2013.

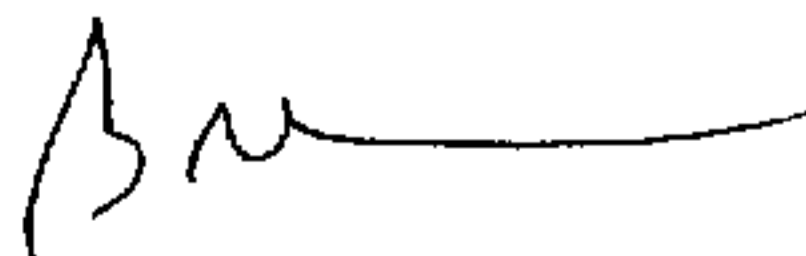
21. In Paragraph 20 of the report, the Official Liquidator has requested the Tribunal to direct the Petitioner Transferor Company to comply with Rule 17(3) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of Order for Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies. In reply given in Paragraph 20(vii) of the affidavit, the Petitioner Transferor Company has stated that the Petitioner Transferor Company shall comply with Rule 17(3) of the Companies (Compromises, 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.

22. The Official Liquidator requested the Tribunal to direct the Petitioner Transferor Company to pay cost of Rs. 10,000/- to the office of the Official Liquidator.

23. 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.

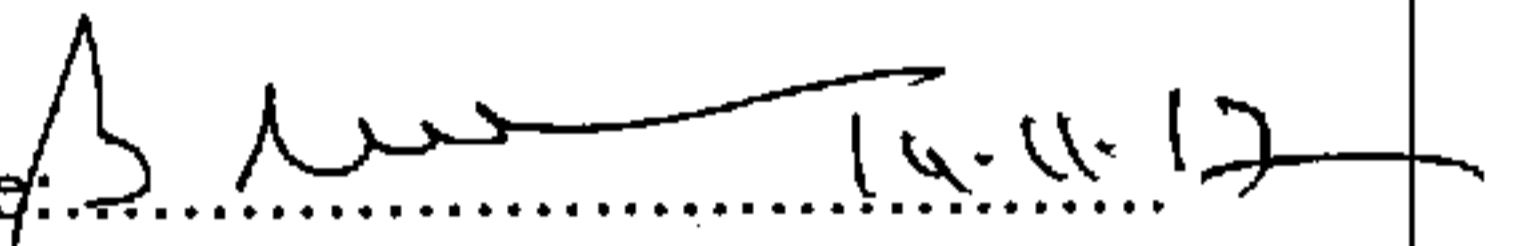
24. In the result, these Petitions are allowed. The Scheme of Amalgamation which is at Annexure – C to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, Masibus Electronics Private Limited and Masibus Automation and Instrumentation Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Transferor Company, namely, Masibus Electronics Private Limited, shall stand dissolved without winding up.



25. The Fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of C.P. (CAA) No. 113/NCLT/AHM/2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

26. Filing and issuance of drawn up orders as 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:  14.11.17
[Bikki Raveendra Babu, Member (J)]

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