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NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CA(CAA) No. 137/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 22.11.2017**

Name of the Company: DLF Hotel Holdings Ltd.  
Lodhi Property Co. Ltd.  
Section of the Companies Act: Section 230-232 of the Companies Act, 2013

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

1. KIRAN SHAH C.A. Petitioner Kiran Shah  
2.

**ORDER**

Learned FCA Mr. Kiran Shah present for Applicants.

Order Pronounced in open court. Vide separate Sheets.

Manorama Kumari  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**  
Dated this the 22nd day of November, 2017.

Bikki Raveendra Babu  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

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

**CA(CAA) No.137/NCLT/AHM/2017**

In the matter of :-

Scheme of Arrangement  
In nature of Amalgamation of  
DLF Hotel Holdings Limited  
DLF Global Hospitality Limited  
Silverlink (Mauritius) Limited with  
Lodhi Property Company Limited  
And their respective Shareholders  
and Creditors.

DLF Hotel Holdings Limited  
Having its Registered Office  
at 304, Shoppers Plaza V,  
Opposite Municipal Market,  
Government Servant Co-Operative Society,  
C.G. Road, Navrangpura,  
Ahmedabad, Gujarat - 380009

... Applicant  
(Transferor Company)

And

Lodhi Property Company Limited  
Having its Registered Office  
at 304, Shoppers Plaza V,  
Opposite Municipal Market,  
Government Servant Co-Operative Society,  
C.G. Road, Navrangpura,  
Ahmedabad, Gujarat - 380009

... Applicant  
(Transferee Company)

Order delivered on 22<sup>nd</sup> November, 2017

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

**And**

**Hon'ble Ms. Manorama Kumari, Member (J)**

**Appearance:**

Mr. Kiran Shah, FCA, for the Applicant Companies.

**ORDER**

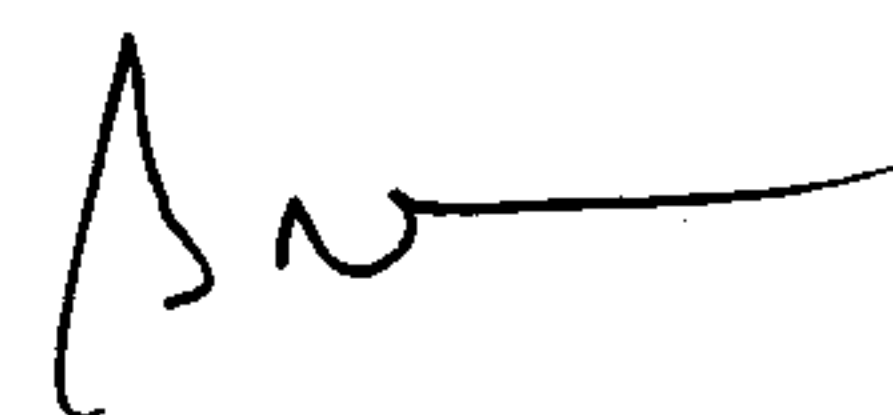
(Per: Ms. Manorama Kumari)

1. Heard Mr. Kiran Shah, FCA, for the Applicant Companies.
2. This is a joint Application filed by DLF Hotel Holdings Limited (Applicant Transferor Company 1); and Lodhi Property

Company Limited (Applicant Transferee Company) under Sections 230 to 232 and 234 of the Companies Act, 2013 [hereinafter referred to as 'the Act'] seeking dispensation of meetings of shareholders, secured creditors and unsecured creditors of the Applicant Companies in respect of a scheme of Amalgamation between DLF Hotel Holdings Limited ("Applicant Transferor Company 1) and DLF Global Hospitality Limited ("Non-Applicant Foreign Transferor Company 2") and Silverlink (Mauritius) Limited ("Non-Applicant Foreign Transferor Company 3") with Lodhi Property Company Limited ("Applicant Transferee Company") and their respective shareholders and creditors ("Scheme" for short).

3. Applicant Transferor Company 1 and Applicant Transferee Company are closely held Public Limited Companies and having common Shareholders and Directors. The proposed Scheme provides for the transfer of the entire business of the Transferor Companies, as a "going concern", in accordance with the terms of the Scheme and pursuant to the provisions of Sections 230-232 and 234 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as amended.

4. The Boards of Directors of the Applicant Companies as well as the Non-Applicant Foreign Transferor Companies have passed resolutions approving the draft Scheme placed before the respective Boards. Copies of the resolutions passed by the Boards of Directors of the Applicant Companies as also the Non-Applicant Foreign Transferor Companies are placed on record as Annexure-8 Colly. Applicant Transferor Company 1 and Applicant Transferee Company have filed certified Audited Financial Statements as on 31st March, 2017.

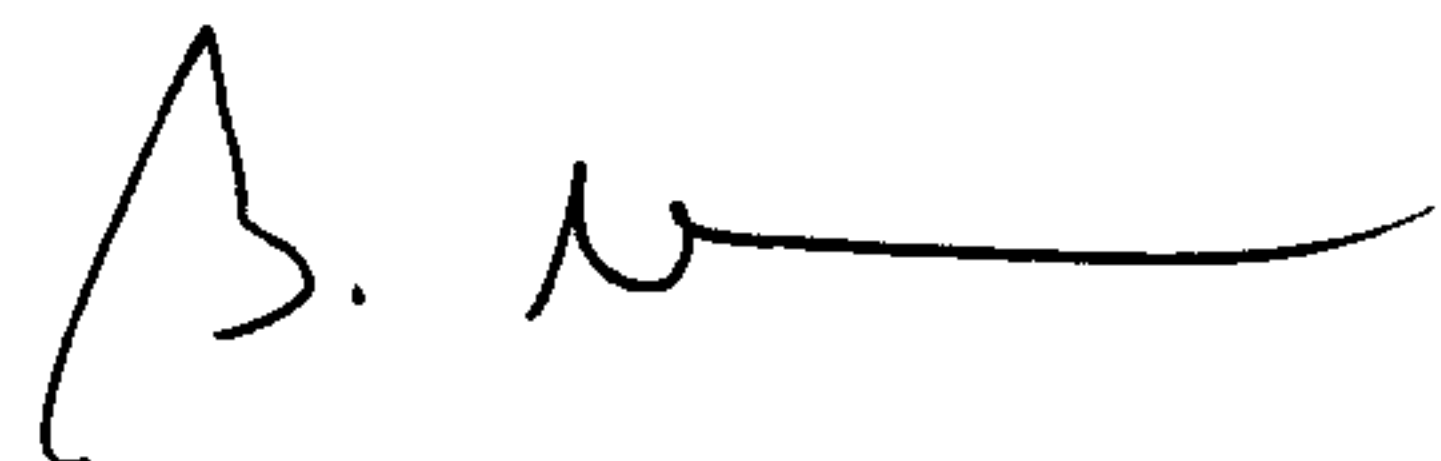


5. Applicant Companies have also filed a Certificate of Statutory Auditors certifying that the Accounting Treatment proposed in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.
6. DLF Global Hospitality Limited (Non-Applicant Transferor Company 2) is a foreign company incorporated as a limited liability company under the provisions of the Company Law, Cap.113 in Cyprus on 14.08.2006, which was subsequently under the provisions of section 354XV of the Companies Law, Cap. 113 of Cyprus, was re-domiciled from the Jurisdiction of Cyprus to Jurisdiction of Mauritius with effect from 29.09.2016 and having registered office at C/o. CIM Corporate Services Limited, Les Cascades Building, Edith Cavell Street, Port Louis, Republic of Mauritius and is a wholly owned subsidiary of the DLF Hotel Holdings Limited (Applicant Transferor Company 1).
7. Silverlink (Mauritius) Limited ("Non-Applicant Transferor Company 3) is a foreign company incorporated as Private Company limited by shares under the provisions of the Companies Act, 2001 of the Republic of Mauritius on 21.02.2003 and having its registered office at C/o. CIM Corporate Services Limited, Les Cascades Building, Edith Cavell Street, Port Louis, Republic of Mauritius and is a wholly owned subsidiary of the foreign company DLF Global Hospitality Limited (Non-Applicant Foreign Transferor Company 2). DLF Global Hospitality Limited and Silverlink (Mauritius) Limited are foreign transferor companies. They are incorporated under the laws of Mauritius and merger is permitted by the law of their jurisdiction and accordingly Boards of Directors and shareholders of the foreign transferor companies have approved the scheme of amalgamation on 25.09.2017 vide Annexure No. 8 Page Nos. 331 - 340. In terms of the paragraph 4(2)(a) of Part II of Fourteenth

Schedule to the Mauritius Act, Foreign Transferor Companies No. 2 & 3 are required to comply with the law of Mauritius and the transferee company shall comply the laws of India regarding amalgamation amongst them. The Transferee company shall undertake to comply the requirements under the Mauritius Companies Act to the Registrar of Companies, Mauritius in relation to the merger of foreign transferor companies No. 2 & 3 with the transferee company. In terms of the paragraph 4(4) of the Fourteenth Schedule to the Mauritius Companies Act, since the surviving company is incorporated under the law of a jurisdiction other than that of Mauritius, the merger or consolidation shall be effective as provided by the laws of that other jurisdiction i.e. the law of India.

8. According to the Applicant Companies, the proposed Scheme will result in the following benefits:

- (i) To pool their financial, commercial and other resources as the magnitude of the investments contemplated will be better met by the Transferee Company.
- (ii) Synergy of operations would be achieved.
- (iii) Greater flexibility and strength and will be able to compete more effectively.
- (iv) Beneficial to and in the best interest of the Shareholders, Creditors and general public at large.
- (v) Will result in better efficiency and economic management, achieve cost saving, reduction of corporate tier, rationalization of administrative expenses, control and running of businesses and further development and growth of the business.



- (vi) To make the applicant Transferee Company a wholly owned subsidiary of DLF Limited in order to reduce the multiple layer of subsidiaries and to have better management, synergy in operations and reduction in multiplicity of legal and regulatory compliances.

9. The Applicant Companies have stated that as on date, the assets of the Applicant Companies exceed their liabilities and would be sufficient to discharge their liabilities in future. The assets and liabilities of the Transferor Companies will be appropriated under the Scheme by the Applicant Transferee Company and the shareholding and other rights of the members of the Applicant Companies will remain unaffected and as a result, the Applicant Transferee Company shall become wholly owned subsidiary company of the group company DLF Limited. All the transferor companies and transferee company have a positive Net-worth and the proposed amalgamation will not affect or adversely impact the rights of the creditors of the Applicant Companies and the Foreign Transferor Companies in view of the strength of the financial position of the Transferor Companies and Transferee company.

10. Pursuant to the notifications of Section 234 of the Companies Act, 2013 and Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 ("NCLT Scheme Rules"), the Reserve Bank of India ("RBI") has on April 26, 2017 issued draft regulations being viz., Foreign Exchange Management (Cross Border Merger) Regulations, 2017 ("Cross Border Draft Regulations"). Regulation 4 of the Cross Border Draft Regulations sets out the conditions that need to be complied with in case of merger of a foreign company with an Indian Company. Regulation 7 of the Cross Border Regulations provides that all transactions arising due to cross border merger are to be reported to the RBI in the same manner in which it is otherwise required to be reported under FEMA or rules or

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regulations framed thereunder. The Indian company and the foreign company involved in the cross border merger shall be required to furnish reports as may be prescribed by the RBI. Regulation 8 of the Cross Border Regulations states that all transactions undertaken in accordance with the Cross Border Regulations shall be deemed to be approved by the RBI as required under Rule 25A of the NCLT Scheme Rules.

11. The Applicant Companies filed an application with the RBI on April 27, 2017 seeking approval under Section 234 of the Companies Act, 2013 read with Rule 25A of the NCLT Scheme Rules. The RBI conveyed its "No-objection" from Foreign Exchange Management Act, 1999 ("FEMA") to the Applicant Company by its letter dated August 09, 2017, which is placed on record as Annexure-7A (Page Nos. 324 -326).

12. Applicant Transferor Company 1 is having 7 (Seven) equity shareholders. A Certified list of shareholders of Applicant Transferor Company 1 is filed as Annexure-10 at Page No. 349. Consent Affidavits of all the shareholders of Applicant Transferor Company 1 are produced on record as Annexure-11 at Page Nos. 350 to 376.

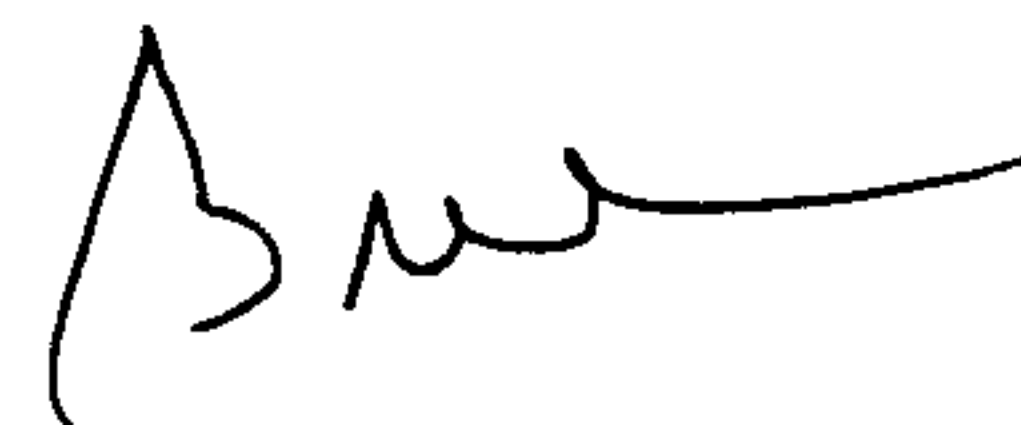
13. In view of the consent affidavits of all the equity shareholders of Applicant Transferor Company 1, the meeting of the equity shareholders of Applicant Transferor Company 1 to consider, and, if thought fit, to approve the proposed Scheme with or without modification(s), is dispensed with.

14. The applicant companies have stated that there are neither any secured creditors nor any unsecured creditors of Applicant Transferor Company 1. A Certificate of Chartered Accountant, certifying the said aspect is produced as Annexure- 12 at Page No. 377. Therefore,

this Tribunal is of the view that the requirement of convening and holding meetings of secured creditors and unsecured creditors of Applicant Transferor Company 1 does not arise.

15. Coming to the Transferee Company, i.e., M/s. Lodhi Property Company Limited, it is a closely held Limited Company. The shares of the Transferee Company are not listed on any exchange. It is stated that the Applicant Transferee Company is having 23 (Twenty Three) equity shareholders. A Certified list of shareholders of the Applicant Transferee Company produced as Annexure-13 at Page Nos. 378 to 380. The Consent Affidavits of 7(Seven) shareholders out of 23 (Twenty Three) shareholders of the Applicant Transferee Company are filed at Page Nos. 381 to 409 representing 99.99% in value of shares. In view of the fact that consent letters of 100% equity shareholders are not obtained, meeting of equity shareholders of the Applicant Transferee Company to consider, and, if thought fit, to approve the proposed Scheme with or without modifications cannot be dispensed with.

16. Coming to the Secured Creditors of the Transferee Company, as per the Certificate of the Chartered Accountant at Annexure- 15 Page Nos. 410-412, there is only one Secured Creditor and the said Secured Creditor has given Consent Letter (Page Nos. 413- 415) agreeing for dispensation of meeting of secured creditors. In view of the consent affidavit of the sole secured creditor of the Applicant Transferee Company, meeting of the secured creditors of the Applicant Transferee Company to consider, and, if thought fit, to approve the proposed Scheme with or without modification(s), is dispensed with.





17. The Applicants have stated that, as on 31<sup>st</sup> July, 2017, there are 23 Creditors of the Applicant Transferee Company. A Certificate of the Chartered Accountant at Annexure- 15 (Page Nos. 410-412) also discloses that there are 21 out of 23 Creditors representing 97.28% of the total value of the creditors have given their consent affidavits which is in excess of 90% of the total value of the Creditors and, therefore, this Tribunal is of view that meeting of the Unsecured Creditors of the Applicant transferee company for the purpose of considering and if, thought fit, approving with or without modification(s) the Scheme is dispensed with.

18. Considering entire record and the arguments advanced by the learned FCA appearing for the Applicant Companies, this Tribunal issues the following directions:-

I. A meeting of Equity Shareholders of the Applicant Transferee Company shall be held on 29<sup>th</sup> December 2017 at 11.00 A.M. at Registered office: 304, Shoppers Plaza V, opposite Municipal Market, Government Servant Co-operative Society, CG Road, Navrangpura, Ahmedabad - 380009 for the purpose of considering and, if thought fit, approving with or without modification(s) the Scheme.

II. At least one month before 29<sup>th</sup> December 2017, i.e. the date of the aforesaid meeting, an advertisement about convening of the said meeting, indicating the day, date, place and time, as aforesaid, shall be published in English daily, Indian Express, Ahmedabad edition and a Gujarati translation thereof in Sandesh, Ahmedabad edition. The publication shall indicate the time within which copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 232 of the Act and the

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prescribed form of proxy can be obtained free of charge at the registered office of the Applicant Transferee Company in accordance with second proviso to sub-section (3) of Section 230 and Rule 7 of the Companies (CAA) Rules, 2016.

III. In addition, at least one month before the date of the meeting of Equity Shareholders to be held as aforesaid, a notice convening the said meeting, indicating the day, date, place and time, as aforesaid, together with a copy of the scheme, a copy of statement required to be furnished pursuant to Section 102 of the Act read with Sections 23 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of equity shareholders the Applicant Transferee Company at their respective registered or last known addresses either by Registered post or Speed Post/Airmail or by Courier. The notice shall be sent to the equity shareholders of the Applicant Transferee Company with reference to the list of the persons appearing on the record of the Applicant Company as on 25<sup>th</sup> September, 2017 .

IV. Mr. Atul Sheth, Chartered Accountant shall be the Chairman/Chairperson of the aforesaid meeting to be held on 29<sup>th</sup> December, 2017 and in respect of any adjournment thereof.

V. Mr. Umesh Ved, a Practicing Company Secretary is appointed as the Scrutinizer for the meeting of the <sup>Equity</sup> ~~Preference~~ Shareholders of the Applicant company.

VI. The Chairman or Chairperson appointed for the aforesaid meeting shall issue the advertisements and send out the notices of the meeting referred to above. The Chairman/Chairperson is free to avail the services of the Applicant Transferee Company or any agency for carrying out the aforesaid directions. The Chairman or Chairperson shall have all powers under the Articles of Association of the applicant transferee company and

*Atul*

also under the Rules in relation to the conduct of meeting, including for deciding any procedural questions that may arise at the meetings or adjournment(s) to the aforesaid scheme or resolution, if any, proposed at the aforesaid meeting by any person(s) and to ascertain the decision of the sense of the meeting of equity shareholders by polling paper/ballot.

VII. The quorum for the meeting of the Equity Shareholders shall be 2.

VIII. Voting by proxy/authorized representatives is permitted, provided that the proxy in the prescribed form/authorization duly signed by the person entitled to attend and vote at the aforesaid meeting is filed with the Applicant Transferee company at its registered office at 304, Shoppers Plaza V, Opposite Municipal Market, Government Servant Co-Operative Society, C.G. Road, Navrangpura, Ahmedabad-380009 not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

IX. The number and Equity Shareholders, as the case may be, shall be in accordance with the records or registers of the Applicant-company and where the entries in the records or registers are disputed, the Chairman of the meetings shall determine the number or value, as the case may be for purposes of the meetings.

X. The Chairman/Chairperson to file an affidavit not less than 7(seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of the Companies (CAA) Rules, 2016.

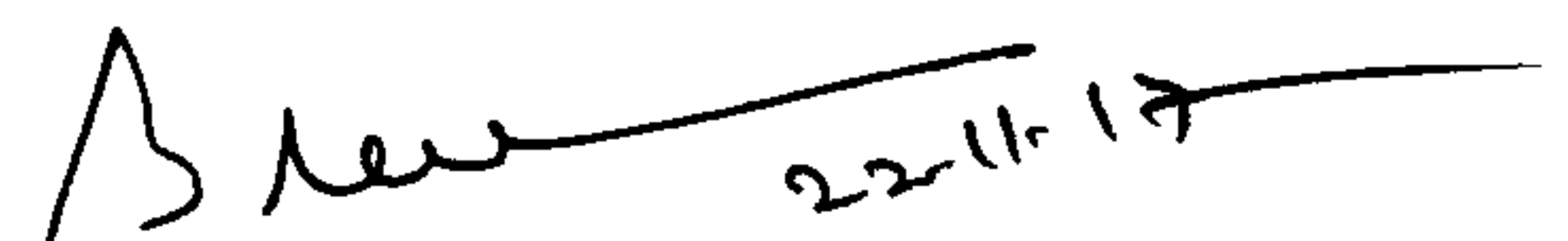
XI. It is further ordered that the Chairman or the Chairperson shall report to this Tribunal on the result of the meetings in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in from No. CAA.4 within seven days.

19. In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules 2016, the Applicant-Companies shall a send a notice under sub-section (3) of Section 230 read with Rule 6 of the Rules in Form No. CAA. 3 along with a copy of the Scheme of Amalgamation, the Explanatory Statement and the disclosures mentioned under Rule 6 to (i) the Central Government through the Regional Director, North Western Region, (ii) the Registrar of Companies, Gujarat, (iii) the Income Tax authorities, (iv) the Reserve Bank of India, and (v) the Official Liquidator concerned (only in the case of the transferor company) 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 such notice, failing which it shall be presumed that they have no objection to make on the proposed scheme. The said notice shall be sent forthwith by registered post or by speed post or by courier or by hand delivery at the office of the authority as required as required by sub-rule (2) of Rule 8 of the Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under subsection (5) of Section 230, shall send the same to the Tribunal within a period of 30 days from the date of receipt of such notice, failing which it will be deemed that they have no representation to make on the proposed arrangement.

20. This Company Application is disposed of accordingly.



Ms. Manorama Kumari,  
Member (J)



Bikki Raveendra Babu,  
Member (J)

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