

S-16.

NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CP (CAA) 117/NCLT/AHM/2017  
CA (CAA) No. 93/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 21.11.2017

Name of the Company: Geek Technologies Pvt Ltd.  
Albus Investmnets Pvt. Ltd. (Joint Application)

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	SWATI SOPARKAR	ADVOCATE	PETITIONERS	Swati Soparkar
2.				

**ORDER**

Learned Advocate Mrs. Swati Soparkar present for Petitioners.

Order pronounced in open Court. Vide separate sheets.

  
BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

Dated this the 21st day of November, 2017.

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

**CP (CAA) 117/NCLT/AHD/2017**

**In the matter of :**

**Geek Technologies Private Limited**

(CIN: U72900GJ2010PTC059920)

A company incorporated under the Provisions of Companies Act, 1956 and having its registered office at 401, Maurya Complex, Behind C.U. Shah College, Income Tax, Ahmedabad-380 014 in the State of Gujarat

: Petitioner  
(Transferor Company)

And

**Albus Investments Private Limited**

(CIN: U51502GJ2006PTC049486)

A company incorporated under the provisions of Companies Act, 1956 and having its registered office at Ashima House, Kavi Nanalal Marg, Ellisbridge, Ahmedabad-380 006 in the State of Gujarat.

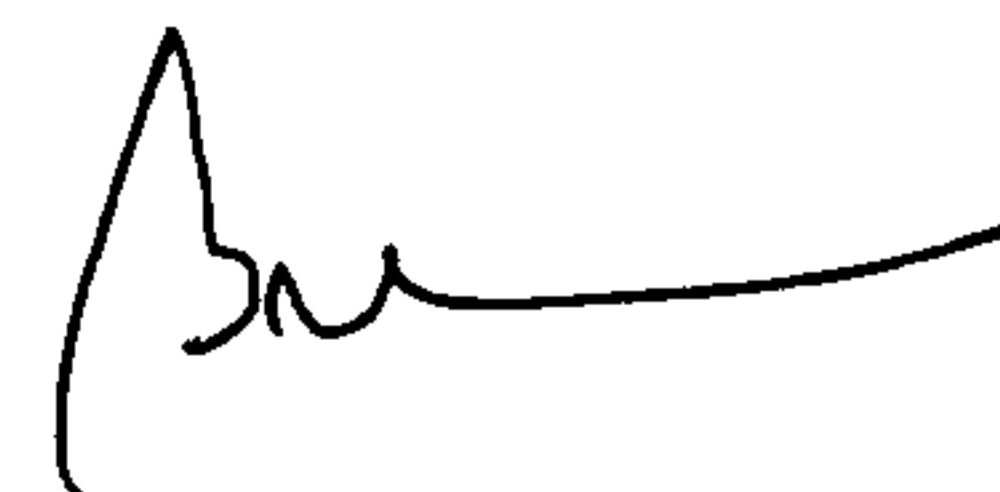
: Petitioner  
(Transferee Company)

Order delivered on 21<sup>st</sup> November, 2017

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

**Appearance:**

Mrs. Swati Soparkar, Advocate, for the petitioners



**ORDER**

Heard learned advocate Ms. Swati Soparkar.

1. This is a joint petition filed by two Petitioner Companies for sanctioning of the Scheme of Arrangement in nature of amalgamation of Geek Technologies Private Limited ("the Transferor Company") with Albus Investments Private Limited ("the Transferee Company").
2. The Petitioner Companies had filed a joint application before this Tribunal being CA (CAA) NO. 93 of 2017 for dispensing with convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors of both the Companies. It was submitted that there were only two Equity Shareholders of the Transferor Company and there were only ten equity shareholders and one Preference Shareholder of the Transferee company. The requisite written approval to the Scheme on affidavits from all the Shareholders were placed on record along with certificates from Chartered Accountant. Similarly, there was only one unsecured creditor each for both these companies and the written consents from the said unsecured creditors of both these companies were placed on record along with certificates from Chartered Accountant. This Tribunal, vide its order dated 24<sup>th</sup> August 2017, inter-alia, dispensed with the meetings of the Equity Shareholders and Unsecured Creditors of both the Petitioner Companies. The said order also clarified that in view

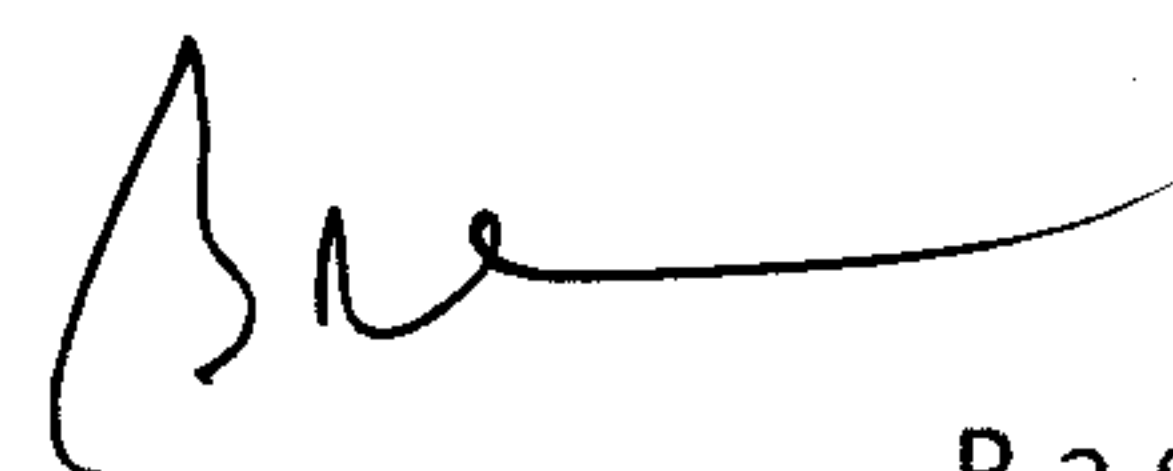
of the fact that there were no Secured Creditors of both these Companies, their meeting was not required to be held.

3. The Petitioner Companies were directed vide the said order dated 24<sup>th</sup> August 2017 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 (iv) Official Liquidator (only for the Transferor Company) along with requisite documents and disclosures. The notices were duly served on all the authorities on or before 31<sup>st</sup> August 2017. The affidavit dated 4<sup>th</sup> September 2017 confirming the compliance of the said directions for service of Notice on all the above Regulatory Authorities along with the acknowledgments for the same was filed with this Tribunal. In response to the said notice, the representations were received from the Regional Director, Western Region, from the Office of the Official Liquidator as well as from the respective Income Tax Officers in the month of September 2017. Representation from any other authority was not received.
4. The present petition seeking sanction of the Scheme, was filed before this Tribunal on 7<sup>th</sup> September 2017. However, on receipt of the representations from the Regional Director and Official Liquidator, the petitioners were required to file an Interlocutory Application for rectification of a factual error in the Authorised



Share Capital of the Transferor Company as mentioned in the Scheme as well as in the petition filed. This Tribunal, vide its order dated 13<sup>th</sup> October 2017, allowed the said application by permitting the petitioners to carry out the said rectification. This Tribunal, vide its order dated 24<sup>th</sup> October 2017, admitted the petition for sanctioning the modified Scheme, fixed the date of hearing as 15<sup>th</sup> November 2017 and directed issuance of notice of hearing of the petition to the regulatory authorities viz. Central Government through Regional Director, North Western Region, Registrar of Companies, Income Tax Authorities for both the companies and Official Liquidator (for the Transferor Company) only, informing them the date of hearing. The petitioners were also directed for publication of notice of hearing of the Petition in English daily, "Indian Express", Ahmedabad Edition and in Gujarati daily, "Sandesh", Ahmedabad Edition.

5. Pursuant to the said order dated 24<sup>th</sup> October 2017, passed by this Tribunal, the Petitioner Companies published notice of hearing of the Petition in English daily, "Indian Express", Ahmedabad Edition and in Gujarati daily, "Sandesh", Ahmedabad Edition as well as additionally in 'Gujarat Samachar' Ahmedabad Edition on 28<sup>th</sup> October 2017 as directed by this Tribunal. Notice of hearing of petition was also served upon all the regulatory authorities on or before 27<sup>th</sup> October 2017. In order to confirm the compliance of the said directions, an



Affidavit of service and Publication dated 30<sup>th</sup> October 2017 on behalf of the Petitioner Companies has been filed.

6. The representations filed by the regulatory authorities viz. the Regional Director, Ministry of Corporate Affairs, Office of the Official Liquidator and concerned Income Tax authorities have been perused by this Tribunal. The petitioners have filed an Additional Affidavit dated 25<sup>th</sup> October 2017 in response to the said representations.
  
7. On perusal of the common representation of the Regional Director, dated 14<sup>th</sup> September 2017, it is noticed that paragraph 2(a), 2(b), 2(c) and 2(d) of the said representation, deals with the factual aspects of the Scheme such as Jurisdiction, Consideration, Amendment of the Capital Clause and Objects Clause of the Transferee Company and Rationale of the Scheme respectively. Vide paragraph 2(e) of the said representation, a factual error in the Authorised Capital of the Transferor Company has been pointed out. As referred herein above, the petitioners have already undertaken the process to rectify the same and the duly modified scheme has been placed for our consideration. Vide para 2 (f) of the said representation, it is confirmed that the Registrar of Companies have submitted their report to the Regional Director and further confirmed that there are no complaints, prosecution, inspection pending against the Petitioner Companies and there is no complaint/representation

against the proposed scheme of Arrangement. Vide para 2 (g) of the said representation, it is confirmed that the Regional Director has no other observation/submissions for the scheme and that the scheme is not prejudicial to the interest of the shareholders and creditors of the petitioner companies and public at large.

8. In response to the Notice of the petition served upon the Office of the Official Liquidator for the Transferor company, representation dated 20<sup>th</sup> September 2017 has been filed by the Official Liquidator. The said authority also has pointed out the factual error with regard to the Authorised Capital of the Transferor Company, which has been duly rectified. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the affairs of the Transferor Company have been conducted within its object clause and it has not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor company 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 of the Transferor Company 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 Company 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 company shall comply with all the applicable provisions of law and shall not be absolved from any of its statutory liability.

9. Perusal of the representation dated 7<sup>th</sup> September 2017 filed by the concerned Income Tax authorities for the Transferor Company, confirms that there are no pending tax demands against the said company at present. It is further pointed out that the case has been selected for scrutiny Assessment for A.Y. 2016-17 under section 143 (3) of the Income Tax Act, which is still in process. Some demand may be raised in future as the outcome of such scrutiny Assessment. In this regard, it has been submitted on behalf of the petitioners that vide Clause 4.4 and 10.1 of the Scheme, it is clearly provided that upon scheme being effective, all debts, liabilities of the Transferor Company shall become the debts and liabilities of the Transferee Company. Similarly, any legal proceedings by and/or against the Transferor Company shall be continued by the Transferee Company. It has been clarified 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 Company.





10. Perusal of the representations dated 4<sup>th</sup> September 2017 and 12<sup>th</sup> September 2017 filed by the concerned Income Tax authorities for the Transferee Company, indicates that there are some outstanding demands. However, it has been elaborately pointed out by the Petitioner Transferee Company vide its Additional Affidavit that the said demands are disputed and the Company has already initiated the requisite proceedings for such disputes before the appropriate authority. Further, since the disputed demands pertain to the Transferee Company, which shall continue to exist even after the sanction of the scheme, the said issue is not relevant for considering and/or sanctioning the proposed Scheme.

11. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificate of Chartered Accountant dated 31<sup>st</sup> July 2017, confirming that the accounting treatment envisaged under the said scheme of Arrangement is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013. The same has been placed on record as Annexure -'T' to the present petition.

12. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the proceedings, it appears that the requirements of the provisions of sections 230-232 of the



Companies Act, 2013 have been duly complied with. The Scheme is genuine and *bona fide* and in the interest of the shareholders and creditors.

13. As a result, the Petition is allowed. The modified Scheme, which is at Annexure "E" to the Petition, is hereby sanctioned and it shall be binding on all equity shareholders, preference shareholder and unsecured creditors of the petitioner companies and all concerned under the Scheme. The petitioner transferor company shall stand dissolved without winding up.
14. The fees of the Official Liquidator are quantified at Rs. 10,000/- for the Transferor Company only. The said fees to the Official Liquidator shall be paid by the Transferee Company.
15. Filing and issuance of drawn up order is 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 authenticated copy of this order along with Scheme as well as the Schedule of Assets of the Transferor Company immediately.
16. The Company petition is disposed of accordingly.

Signature..... 21-11-17  
Bikki Raveendra Babu, Member (J)

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