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**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CA(CAA) No. 163/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 01.12.2017**

Name of the Company: Adani Enterprise 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>
1.	SANDEEP SINGHI	ADVOCATES	APPLICANT	PARINI. B. SHAH
2.	PRANJAL BUCH			
3.	PARINI SHAH			

**ORDER**

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjali Buch with Learned Advocate Ms. Parini Shah present for Applicant.

Order pronounced in open Court. Vide Separate Sheets.

  
**BIKKI RAVEENDRA BABU**  
**MEMBER JUDICIAL**

Dated this the 1st day of December, 2017.

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

**CA(CAA) No.163/NCLT/AHM/2017**

In the matter of :-

Adani Enterprises Limited,  
a company incorporated under  
the provisions of the Companies  
Act, 1956 and having its  
registered office at Adani House,  
Near Mithakhali Six Roads,  
Navrangpura, Ahmedabad – 380  
009, Gujarat, India.

... Applicant  
(Transferor Company)

Order delivered on 1<sup>st</sup> December, 2017

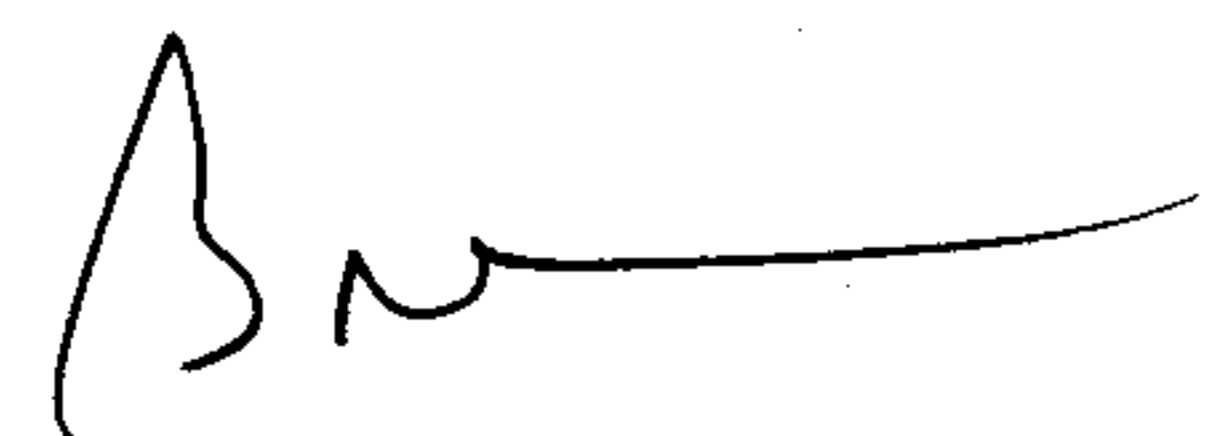
**Coram: Hon'ble Mr. Bikki Raveendra Babu, Member (J)**

**Appearance:**

Mr. Sandeep Singhi with Mr. Pranjal Buch and Ms. Parini Shah,  
Advocates, for M/s. Singhi & Co., Advocates, for the Applicant.

**ORDER**

1. Heard learned Advocate Mr. Sandeep Singhi for M/s. Singhi & Co., Advocates for the Applicant Company. Perused the application and the supporting affidavit of Mr. Jaladhi Shukla, Deputy General Manager (Secretarial) of the Applicant Company dated 21<sup>st</sup> day of November 2017 and the documents annexed thereto.



2. Adani Enterprises Limited (hereinafter referred to as the “Transferor Company” or “AEL” as the context may admit) is a public company limited by shares.

3. Adani Green Energy Limited (hereinafter referred to as the “Transferee Company” or “AGEL” as the context may admit) is an unlisted public company limited by shares.

4. The Transferor Company has filed this application seeking directions for convening the meetings of its Equity Shareholders, Secured Creditors (including debentureholders) and Unsecured Creditors in respect of the arrangement embodied in the Scheme of Arrangement among Adani Enterprises Limited and Adani Green Energy Limited and their respective shareholders and creditors (“Scheme” for short) in the nature of (i) demerger of the Renewable Power Undertaking (as defined in the Scheme) of AEL and transfer of the same to AGEL; (ii) issuance of equity shares by AGEL to the equity shareholders of AEL; (iii) reduction of paid-up equity share capital of AGEL, pursuant to cancellation of equity shares held by AEL in AGEL; and (iv) increase in the authorized share capital of AGEL, pursuant to the provisions of Sections 230 - 232 of the Companies Act, 2013 (hereinafter referred to as the “Act”) and other applicable provisions of the Act.



5. The Transferor Company obtained Valuation Report, Fairness Opinion, report of the Audit Committee and are produced as Annexures H, I and J, respectively.

6. The Board of Directors of the Transferor Company, in its meeting held on 7<sup>th</sup> day of October 2017, passed a resolution approving the proposed Scheme placed before the Board and the same is produced as Annexure K.

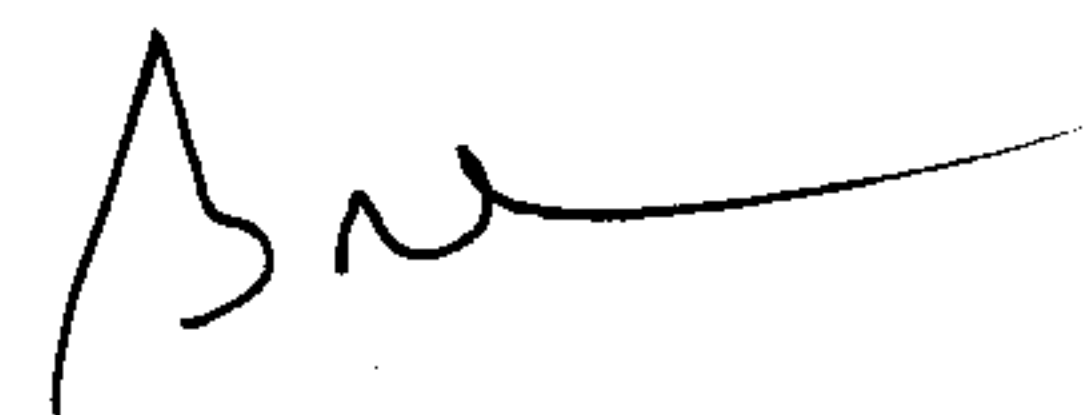
7. It is submitted by the learned Advocate appearing for the Applicant Company that Securities and Exchange Board of India (SEBI), thereafter, by its letter dated 20<sup>th</sup> day of November 2017, addressed a communication in respect of the Scheme to BSE Limited (BSE)/National Stock Exchange of India Limited (NSE). In the said communication, SEBI, inter alia, made the following comments:

*“Company shall ensure that applicable information pertaining to unlisted entity AGEL is included in the abridged prospectus as per the format specified in the circular.”*

*“Company shall ensure that additional information, if any, submitted by the Company, after filing the Scheme with the Stock Exchange, from the date of receipt of this letter is displayed on the websites of the listed company.”*

*“Company shall duly comply with various provisions of the Circulars.”*

*“Company is advised that the observations of SEBI/Stock Exchanges shall be incorporated in the petition to be filed before National Company Law Tribunal (NCLT) and the company is obliged to bring the observations to the notice of NCLT.”*





*"It is to be noted that the petitions are filed by the companies before NCLT after processing and communication of comments/observations on draft scheme by SEBI/stock exchange. Hence, the company is not required to send notice for representation as mandated under Section 230(5) of Companies Act, 2013 to SEBI again for its comments / observations / representations."*

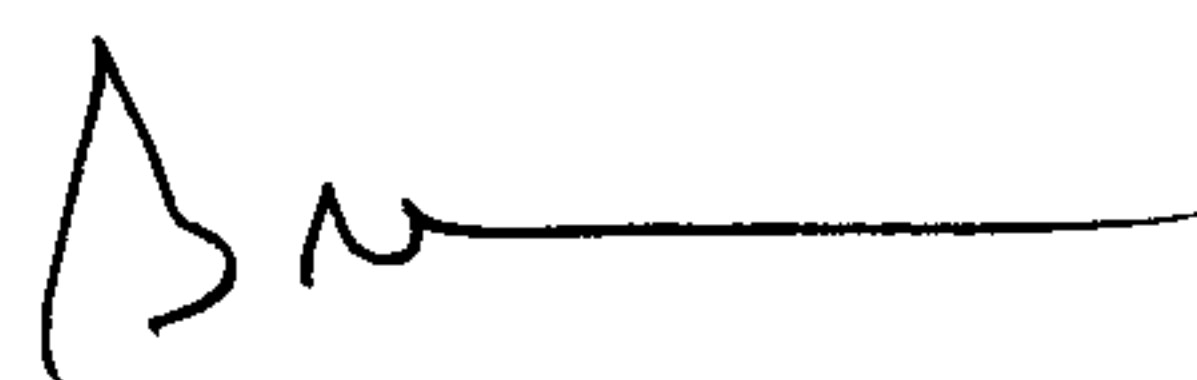
Based on the aforesaid comments from SEBI, BSE and NSE issued No Adverse Observations/No Objection letters, both dated 20<sup>th</sup> day of November 2017 to the Transferor Company, which are placed on record as Annexure "N (Colly)".

8. It is stated in the application that no investigation has been instituted or pending in relation to the Transferor Company under Chapter XIV of the Act. It is also stated in the application that no winding up proceedings are filed or pending against the Transferor Company. The Applicant Company filed its Annual Reports as on 31<sup>st</sup> day of March 2017. The Applicant Company also filed the original certificate issued by the Statutory Auditor of the Company under Section 133 of the Act at Annexure "P".

9. In this Company Application, the Applicant Company has prayed for permission to hold separate meetings of the Equity Shareholders, Secured Creditors (including debentureholders) and Unsecured Creditors of the Applicant Company for the purpose of considering and, if thought fit, approving with or without modification(s), the Scheme and for issuing appropriate directions incidental for holding of such meetings.

10. Having considered the entire material on record, this Tribunal passes the following order:-

- a. A meeting of the Equity Shareholders of the Applicant Company shall be convened and held at J. B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad-380 015, Gujarat, India, on Wednesday, the 10<sup>th</sup> day of January 2018 at 10.00 a.m. (10.00 hours), for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme.
- b. A meeting of the Secured Creditors (including debentureholders) of the Applicant Company shall be convened and held at J. B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad-380 015, Gujarat, India, on Wednesday, the 10<sup>th</sup> day of January 2018 at 11.00 a.m. (11.00 hours), for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme.
- c. A meeting of the Unsecured Creditors of the Applicant Company shall be convened and held at J. B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad-380 015, Gujarat, India, on Wednesday, the 10<sup>th</sup> day of January 2018 at 12.00 noon (1200 hours), for the purpose of considering, and if thought fit, approving with or without modification(s), the arrangement embodied in the Scheme.



- d. In view of Sections 230(4), 232(1) of the Act read with rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('Rules') and rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the Applicant Company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by the Equity Shareholders of the Applicant Company to the Scheme, shall be carried out through (i) postal ballot and e-voting; and (ii) ballot/polling paper at the venue of the meeting to be held on Wednesday, the 10<sup>th</sup> day of January 2018. In the case of meetings of Secured Creditors (including debentureholders) and Unsecured Creditors, the voting shall be carried out through ballot/polling paper.
- e. At least one month before 10<sup>th</sup> day of January 2018, i.e. the date of the aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, the date, place and time aforesaid, shall be published in English Daily, Indian Express (All editions) and a Gujarati translation thereof in Sandesh (Ahmedabad edition). The publication shall indicate time within which the copies of the Scheme shall be made available to the concerned persons free of charge from the registered office of the Applicant Company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Section 230-232 of the Act and the prescribed form of proxy can be obtained free of charge at the registered office of the Applicant Company or at the office of its Advocates, i.e. M/s. Singhi & Co., Singhi House, 1, Magnet Corporate Park, Near Sola Flyover, S. G. Highway, Ahmedabad-380 059 in accordance with second proviso to sub-section (3) of Section 230 of the Act and Rule 7 of the Rules.



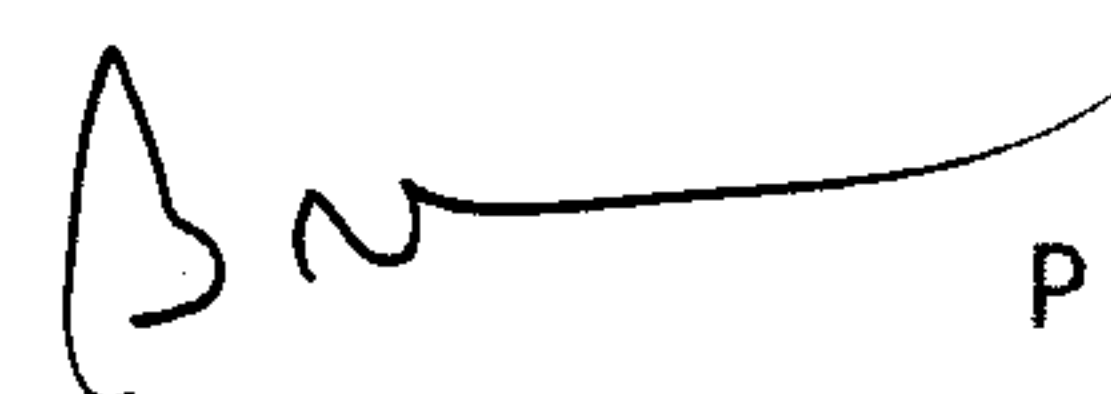


- f. At least one month before 10<sup>th</sup> day of January 2018, i.e. the date of the aforesaid meeting of the Equity Shareholders (including Public Shareholders), a notice in Form No. CAA.2 convening the said meeting, indicating the day, the date, the place and time aforesaid containing instructions with regard to postal ballot and e-voting (in case of the Equity Shareholders), together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with the provisions of Sections 230 – 232 of the Act and Rule 6 of the Rules, and the prescribed form of Proxy, shall be sent to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier or e-mail. The aforesaid notice and other documents shall also be placed on the website of the Applicant Company, if any, and the same shall be sent to SEBI [proviso to Section 230(3)]. The notice shall be sent to the Equity Shareholders of the Applicant Company with reference to the list of the persons appearing on the record of the Applicant Company and its register as on 4<sup>th</sup> day of December 2017, being the cut-off date as prescribed under rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut-off date would be the date determining the eligibility to vote by the Equity Shareholders.
- g. In addition, at least one month before the date of the aforesaid meetings of the Secured Creditors (including debentureholders) and the Unsecured Creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, the date, the place and time aforesaid, together with a copy of the Scheme, a copy of the statement required to be furnished pursuant to Section 102 of the Act read with the provisions of Sections 230 – 232 of the Act and Rule 6 of the Rules, and the prescribed form of Proxy, shall



be sent to each of the Secured Creditors (including debentureholders) and the Unsecured Creditors of the Applicant Company at their respective registered or last known addresses either by Registered Post or Speed Post or by Courier. The notice shall be sent to the Secured Creditors (including debentureholders) and the Unsecured Creditors of the Applicant Company with reference to the list of the persons appearing on the record of the Applicant Company as on 30<sup>th</sup> day of November 2017. The aforesaid date of 30<sup>th</sup> day of November 2017 would be the date determining the eligibility to vote by the Secured Creditors (including debentureholders) and the Unsecured Creditors.

- h. Mr. V. Subramanian, an Independent Director of the Applicant Company and in his absence Mr. Hemant Nerurkar, an Independent Director of the Applicant Company and in his absence Mrs. Vijaylaxmi Joshi, an Independent Director of the Applicant Company shall be the Chairman/Chairperson of the aforesaid meetings to be held on Wednesday, the 10<sup>th</sup> day of January 2018 and in respect of any adjournment or adjournments thereof.
- i. Mr. Chirag Shah, a practicing Company Secretary, is appointed as the scrutinizer for the meeting of the Equity Shareholders of the Applicant Company including for conducting the postal ballot and e-voting process and also for the meeting of the Secured Creditors (including debentureholders) and Unsecured Creditors of the Applicant Company.
- j. The Chairman/Chairperson appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman/Chairperson is free to avail the services of the



Applicant Company or any agency for carrying out the aforesaid directions. The Chairman/Chairperson of the meetings shall have all powers under the Articles of Association of the Applicant Company and also under the Rules in relation to conduct of meetings, including for deciding any procedural questions that may arise at the meetings or at adjournment or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid Scheme or resolution, if any, proposed at the aforesaid meetings by any person(s) and to ascertain the decision of the sense of the meeting of Equity Shareholders by (i) postal ballot and e-voting; and (ii) ballot/polling paper at the venue of the meeting of the Equity Shareholders and for the Secured Creditors (including debentureholders) and the Unsecured Creditors by ballot/polling paper.

- k. The quorum for the meeting of the Equity Shareholders shall be 30 (thirty) persons present in person. The quorum for the meeting of the Secured Creditors (including debentureholders) shall be 2 (two) persons present in person. The quorum for the meeting of the Unsecured Creditors shall be 5 (five) person present in person.
- l. Voting by proxy/authorised representative is permitted, provided that the proxy in the prescribed form/authorisation duly signed by the person entitled to attend and vote at the aforesaid meetings, is filed with the Applicant Company at its registered office at Adani House, Near Mithakhali Six Roads, Navrangpura, Ahmedabad – 380 009, Gujarat, India, not later than 48 hours before the meetings vide Rule 10 of Rules read with Section 105 of the Act.
- m. The number and value of the equity shares of the Equity Shareholders or the value of the debts of the Secured Creditors (including debentureholders) and Unsecured

Creditors, 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/Chairperson of the meetings shall determine the number or value, as the case may be, for purposes of the meetings, subject to the orders of this Tribunal in the petition seeking sanction of the Scheme.

- n. Chairman/Chairperson to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the directions regarding the issue of notices and the advertisement of the meetings, have been duly complied with as per Rule 12 of the Rules.
- o. It is further ordered that the Chairman/Chairperson shall report to this Tribunal on the result of the said meetings in Form No. CAA.4, verified by his affidavit as per Rule 14 of the Rules in Form No. CAA.4 within 7 (seven) days after the conclusion of the meetings. The report of Chairman/Chairperson shall be filed before this Tribunal by the Chairman/Chairperson himself/herself, but not Applicant Company.
- p. SEBI Circular requires that the Scheme shall be approved by the public shareholders of the Applicant Company. The voting in respect of the same is to be carried out through e-voting. Since the Applicant Company is directed to convene the meeting of the Equity Shareholders, which includes Public Shareholders, and voting in respect of Equity Shareholders which includes Public Shareholders is through postal ballot and e-voting, it is sufficient compliance of SEBI Circular. However, the scrutinizer appointed for the said meeting of the Equity Shareholders shall also submit his separate report, to the Chairman of the Applicant Company



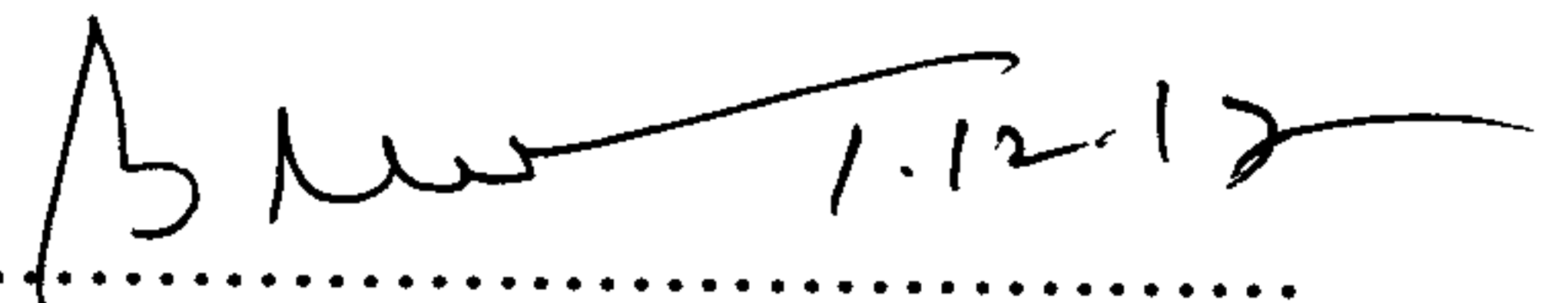
or to the person so authorised by him, with regard to the result of the e-voting in respect of the public shareholders. The said report to be submitted by the scrutinizer shall be in addition to the report submitted by the scrutinizer to the Chairman/Chairperson of the meeting with regard to the result of the postal ballot and e-voting in respect of the Equity Shareholders and the report with regard to the result of the ballot/polling paper cast at the meeting in respect of the Secured Creditors (including debentureholders) and the Unsecured Creditors.

- q. In compliance of sub-section (5) of Section 230 of the Act and Rule 8 of the Rules, the Applicant Company shall send the notice of meeting under sub-section (5) of Section 230 of the Act read with Rule 6 of the Rules in Form No. CAA.3 along with the copy of the Scheme, the explanatory statement and the disclosures mentioned under Rule 6 of the Rules to (i) the Central Government through Regional Director, North-Western Region; (ii) the Registrar of Companies, Gujarat; (iii) concerned Income-Tax Authorities; (iv) Reserve Bank of India; (v) BSE Limited; (vi) National Stock Exchange of India Limited; and (vii) SEBI, 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 after notice is sent to the members or creditors of the Applicant Company by registered post or by speed post or by courier or by hand delivery at the office of the authority as required by sub-rule (2) of Rule 8 of the Rules. The aforesaid authorities, who desire to make any representation under sub-section (5) of Section 230 of the Act, 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.

11. This Company Application is disposed of accordingly.

Signature..... 1.12.12  
(Bikki Raveendra Babu) Member (J)

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