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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) No.121/NCLT/AHM/2017
CA (CAA) No.101/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: Nirayu Pvt. 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.	SWATI SOPARKAR	ADVOCATE	PETITIONER	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Common 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**

CP (CAA) No. 119/NCLT/AHM/2017

With

CP (CAA) No. 120/NCLT/AHM/2017

And

CP (CAA) No. 121/NCLT/AHM/2017

In the matter of :-

1. Sierra Investments Private Limited
(CIN U70109GJ1988PTC044681)
A company incorporated under the
Provisions of Companies Act, 1956]
and having its registered office at
5th Floor, Administration Building,
Alembic Limited, Alembic Road,
Gorwa, Vadodara – 390 003
In the state of Gujarat. ... Petitioner of CP(CAA) No.119 of 2017
(First Transferor Company)
2. Whitefield Chemtech Private Limited
(CIN U24230GJ1985PTC098563)
A company incorporated under the
provisions of Companies Act, 1956
and having its registered office at
FF-53, Avishkar Complex,
Old Padra Road, Vadodara-390015
In the state of Gujarat. ... Petitioner of CP(CAA) No.120 of 2017
(Second Transferor Company)
3. Nirayu Private Limited
(CIN U51909GJ1971PTC098778)
A company incorporated under the
provisions of Companies Act, 1956
and having its registered office at
FF-54, Avishkar Complex,
Old Padra Road, Vadodara-390015
In the state of Gujarat. ... Petitioner of CP(CAA) No.120 of 2017
(Transferee Company)

Order delivered on 1st December, 2017

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

Appearance:

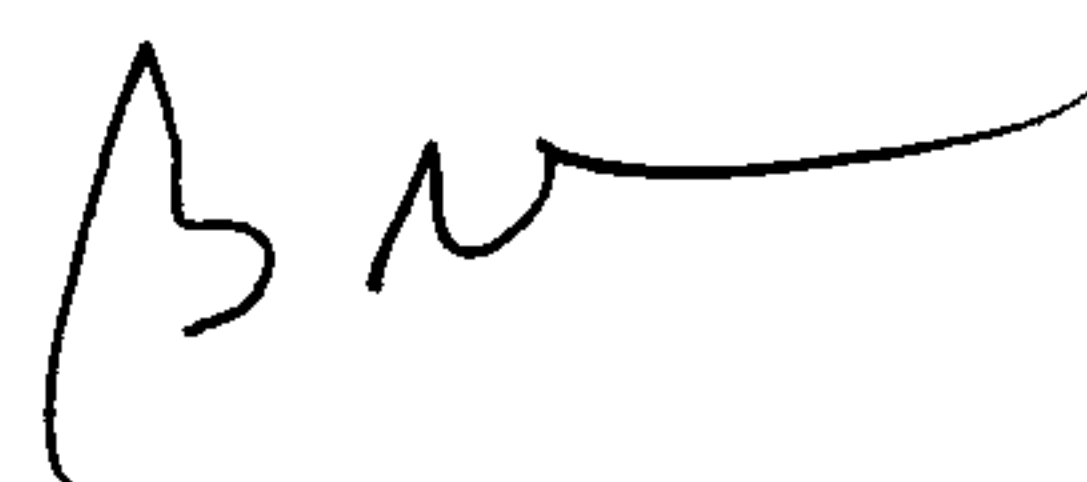
Mrs. Swati Soparkar, Advocate for the petitioner companies.



COMMON ORDER

1. This is a common order for three separate petitions filed by two Transferor companies and a Transferee Company under Section 230 and 232 of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement in the nature of Amalgamation of Sierra Investments Private Limited (First Transferor Company) and Whitefield Chemtech Private Limited (Second Transferor Company) with Nirayu Private Limited (Transferee Company) and their respective shareholders and Restructure of Capital of Nirayu Private Limited.

2. The said petitioner companies had filed the proceedings before this Tribunal in form of joint application, being C A (CAA) No. 101 of 2017. By the said application, the Petitioner Companies sought dispensation of meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner Companies. It was submitted that all the shareholders of the Petitioner Companies had submitted written consent letters on affidavit approving the proposed Scheme. Similarly, all the Unsecured Creditors of two Petitioner Companies had submitted written consent letters on affidavit approving the proposed Scheme. It was further submitted that there were no Secured Creditors of any of the Petitioner Companies and no Unsecured Creditors of the First Transferor Company. Hence, this Tribunal, vide order dated 15th September 2017, passed in CA CAA No. 101



of 2017, dispensed with meetings of shareholders and unsecured creditors of all the Companies. Since there were no Secured Creditors of any of the Petitioner Companies, as certified by the Chartered Accountants, their meeting was held to be not necessary. The petitioner companies, thereafter, filed separate petitions on 12th October 2017.

3. Vide the aforesaid order dated 15th September 2017, the Petitioner Companies were also directed 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 for the Transferor Companies only alongwith Notice, Explanatory Statement and other requisite documents and disclosures. The notices were duly served on all the authorities on or before 19th September 2017. An affidavit dated 25th September July 2017 confirming 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 Regional Director filed an affidavit with the Hon'ble Tribunal dated 27th September 2017 contending non-compliance of the provisions of the Companies Act, 2013 by the Transferee Company. However, on satisfactory explanation for the same by the petitioners, common representation dated 17th October 2017 was received from the Regional Director, Western Region and



representations dated 12th October 2017 were received from the Official Liquidator. No Representation was received either from the Income Tax Authorities or from any other regulatory authority.

4. The petitions were admitted on 6th November 2017. The date of hearing was fixed as 28th November 2017. Directions were issued to publish notice of hearing of petitions in the newspapers viz. English daily, Indian Express and Gujarati daily, Sandesh Vadodara editions for all the companies, at least before 10 days of the date of hearing of the petitions. Further directions were also issued to serve notice of hearing of the petitions to the statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, and (iii) Official Liquidator for the Transferor Companies, at least before 10 days of the date of hearing of the petition.

5. Pursuant to the said directions, notices were duly served by the petitioner companies on the statutory authorities on 8th November 2017 and publications were duly made in the newspapers - Vadodara editions on 9th November 2017. Respective affidavits of service and publication dated 10th November 2017 confirming the same have been placed on record.

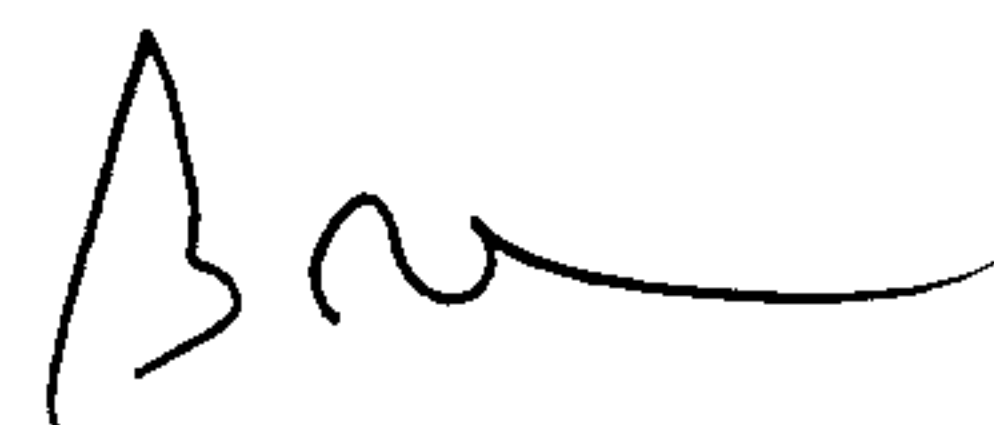
6. Heard Mrs. Swati Soparkar, learned advocate appearing for the petitioner companies.



7. It has been submitted that representation in form of the affidavit dated 17th October 2017 has been received from the Regional Director for the petitioner companies. The Petitioner Companies have filed separate responses to the representation of the Regional Director in respective petitions in form of Additional Affidavit dated 6th November 2017.

(i) It has been submitted that Paragraphs 2 (a), and (b), of the affidavit by Regional Director confirm the nature of proposal, and consideration as confirmed by the Chartered Accountant as well as Rationale of the proposed arrangement.

(ii) Vide Para 2(c), the Regional Director has observed that clause 18.2 of the said Scheme is not relevant and hence redundant. The Regional Director has also suggested amendment of the Scheme by deleting the said clause. In this regard, it has been submitted by the petitioners that the said clause 18.2 is not in any way contrary to law. It does not propose anything in contravention of the law. The scheme is devised as per the commercial prudence of the management of the petitioner companies. The said clause only specifies a consequence of the dissolution of the petitioner transferor companies and hence it is not necessary to amend the scheme for the said reason. The petitioner is not required to put any other fact on record.



(iii) It has been further observed by the Regional Director vide para 2 (d) that as envisaged vide clause 9 of the Scheme, the Authorised Capital of the Transferor Companies shall be consolidated with the Authorised Capital of the Transferee Company. Therefore, the Transferee Company will be required to pay the difference of amount of fees payable on the enhanced capital of the Transferee Company and the actual fees already paid by the Transferor Companies. It has been clarified by the petitioner companies that the petitioner Transferee Company shall pay any such difference, if payable under the applicable provisions of law.

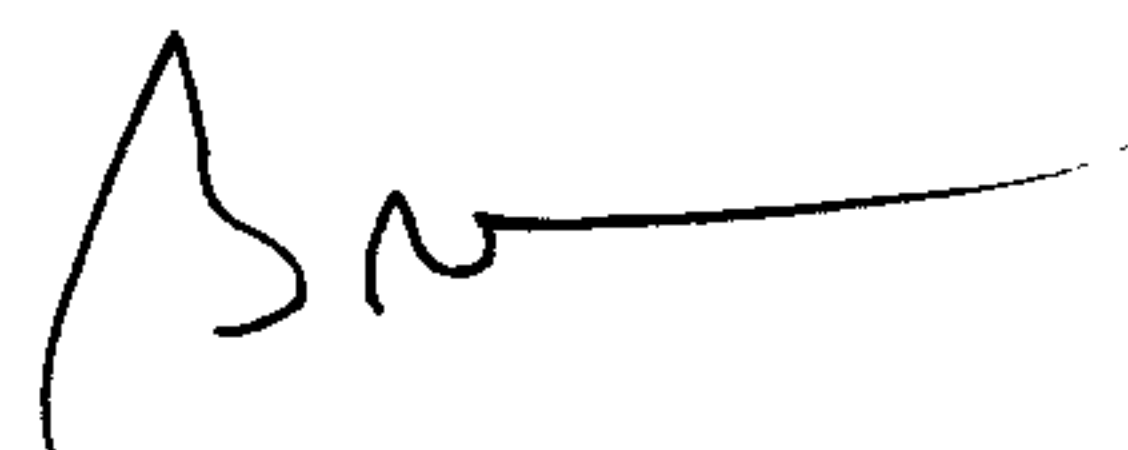
(iv) Vide Para 2 (f), the Regional Director has observed that the first Transferor Company being an investment company, should comply with the RBI guidelines, including the NOC from Reserve Bank of India. In this regard, it has been submitted that although the said company was incorporated with investment activities as one of its main objects, factually, the company is not engaged in investment activity. As submitted by the petitioner first Transferor Company in the present as well as previous proceedings, viz. Scheme, Company Application and Company Petition, it is engaged in business of printers, publishers, commercial artists and advertising agents. As a result, the RBI guidelines pertaining to NBFC are not applicable to the said Petitioner Transferor company and as a consequence, NOC from RBI is not required in the present case.

(v) Vide para 2 (g) it is pointed out that Registrar of Companies has confirmed that there are no complaints against any of the petitioner companies. The Regional Director vide para 2 (h) has confirmed that he has no other observation/submission and that the proposed Scheme of Arrangement is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

8. In response to the notice of the petition served upon the Office of the Official Liquidator for the Transferor companies, separate representations dated 12th October 2017 have been filed by the Official Liquidator. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the affairs of the Transferor Companies have been conducted within their respective object clause and the same have not been conducted in any manner prejudicial to the interest of its members or public interest, hence the petitioner transferor companies 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 Companies 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 Companies 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 companies shall comply with all the applicable provisions of law and shall not be absolved from any of their statutory liability.

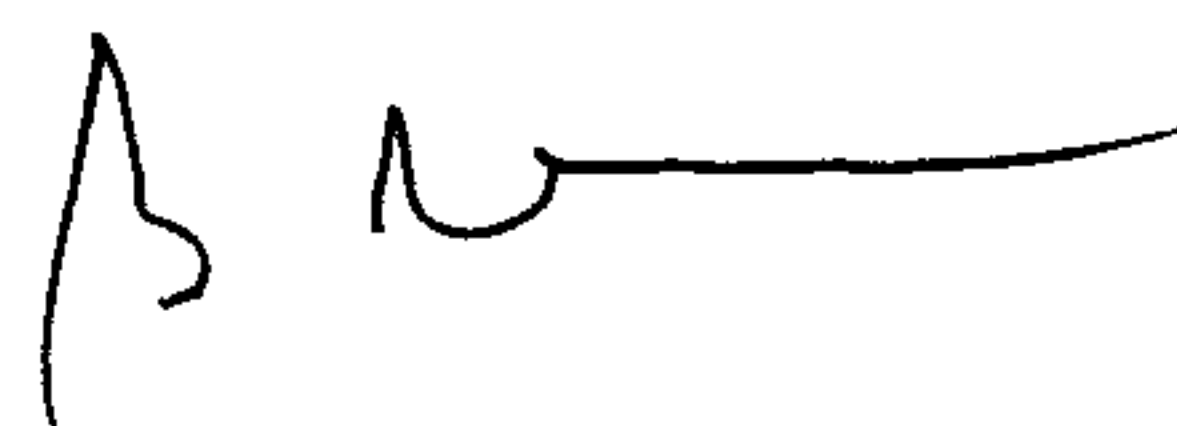
9. No representation has been received from the Income Tax Authorities. Hence, it is assumed that the said authorities have no objection to the proposed Scheme. However, vide the respective Additional affidavits dated 6th November 2017, the petitioner companies have made their submissions based on their own records. The details submitted pertain to the outstanding demands of income tax which are disputed and proceedings are pending before different Appellate authorities. It has been submitted that there are no undisputed outstanding tax demands. It has been further submitted that vide Clause 13.2 of the Scheme, it is clearly provided that upon scheme being effective, all tax liabilities of the petitioner Transferor Companies shall become liabilities of the Transferee Company. Similarly, any legal proceedings by and/or against the Transferor Companies shall be continued by the Transferee Company. It has been further submitted 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 Companies.

10. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of Chartered Accountant dated 5th September 2017, confirming that the accounting treatment envisaged under the said Scheme of Arrangement in the books of the Transferee Company is in compliance with the applicable Accounting Standards notified by Central Govt. in section 133 of the Companies Act, 2013. The same have been placed on record as Annexure-'H' to all the petitions.

11. Attention of the Tribunal is also drawn to Clause 8 of the Scheme which refers to Cancellation of Shares of the Transferee Company which are currently held by the first Transferor Company. It has been submitted that in light of the new shares to be issued by the Transferee Company to the shareholders of the Transferor Companies towards consideration, there will not be net reduction of the Share Capital of the Transferee Company. It has been further pointed out that the said reduction is by operation of law and is proposed as an integral part of the Scheme. In light of the explanation to Section 232, the said petitioner Transferee Company is not required to undertake any specific procedure under Section 66 of the Companies Act, 2013.



12. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied. The proposed Scheme of Arrangement appears to be genuine and bona fide and in the interest of the shareholders and creditors as well as in the public interest and the same deserves to be sanctioned.

13. As a result, the petitions being C P (CAA) No. 119, 120 and 121 of 2017 are hereby allowed. The Scheme which is at Annexure- 'C' to all the petitions is hereby sanctioned and it is declared that the same shall be binding on the petitioner companies, their shareholders, unsecured creditors and all concerned under the scheme. It is also declared that the Transferor Companies viz. Sierra Investments Private Limited and Whitefield Chemtech Private Limited shall stand dissolved without winding up.

14. The fees of the Official Liquidator is quantified at Rs. 10,000/-each in respect of the Transferor Companies only. The said fees to the Official Liquidator shall be paid by the Transferee Company.

15. Filing and issuance of drawn up order is hereby 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 authenticated copy of this order along with Scheme immediately.

16. The petitioner companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Transferor companies as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 60 days from the date of the order.

17. The Petitioner companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with INC-28 in addition to physical copy as per relevant provisions of the Act.

18. These Company Petitions are disposed of accordingly.

Signature.....
[Bikki Raveendra Babu, Member (J)]

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