

S-5

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) 78/NCLT/AHM/2017
With CA(CAA) No. 42/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 12.12.2017**

Name of the Company: Navdurga Voyage Pvt. Ltd.

Section of the Companies Act: Sections 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>
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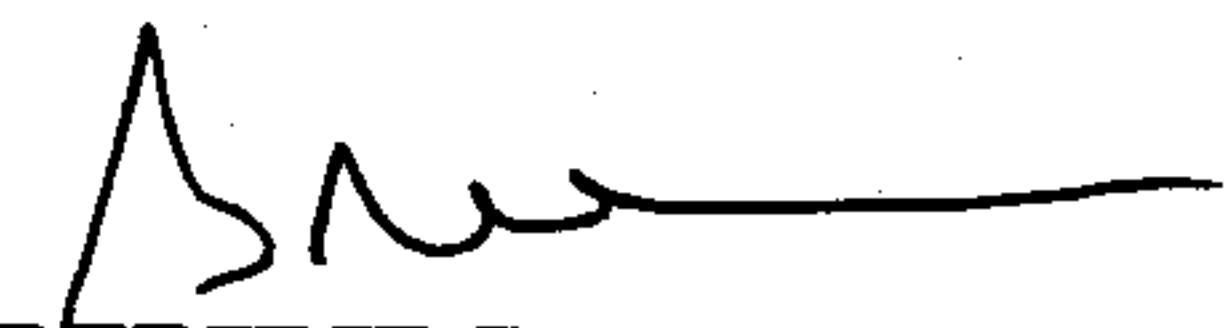
1.

2.

ORDER

None present for Petitioner.

Common Order pronounced in open Court. Vide separate Sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 12th day of December, 2017.

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

CP(CAA) No.75 of 2017

With

CP(CAA) No.76 of 2017

With

CP(CAA) No.77 of 2017

With

CP(CAA) No.78 of 2017

With

CP(CAA) No.79 of 2017

And

CP(CAA) No.80 of 2017

In the matter of :-

1. Sanghi Infrastructure Limited,
A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 10th Floor, Kataria Arcade, Off. S.G. Highway, Post Makarba, Ahmedabad – 380 051, Gujarat. ...

Petitioner
(Amalgamating Company 1)
2. Shreenathji Voyage Private Limited,
A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1875, Pada Pole, Near Jain Upashray, Gandhi Road, Ahmedabad – 380 001, Gujarat. ...

Petitioner
(Amalgamating Company 2)
3. Balaji Voyage Private Limited,
A company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 9th Floor, President House, Ambawadi, Ellisbridge, Ahmedabad – 380 006, Gujarat. ...

Petitioner
(Amalgamating Company 3)
4. Navdurga Voyage Private Limited,
A company incorporated under the provisions of the Companies Act, 1956

and having its registered office at
101, 1st Floor, President House,
Near Ambawadi Circle,
Opp. C.N. Vidyalaya, Ellisbridge
Ahmedabad – 380 006, Gujarat. ...

Petitioner
(Amalgamating Company 4)

5. Enrich Steels Private Limited,
A company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at
10th Floor, Kataria Arcade,
Off. S. G. Highway, Post Makarba,
Ahmedabad – 380 051, Gujarat. ...

Petitioner
(Demerged Company)

6. Kachchh Hospitality Private Limited,
A company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at
10th Floor, Kataria Arcade,
Off. S.G. Highway, Post Makarba,
Ahmedabad – 380 051, Gujarat. ...

Petitioner
(Amalgamated Company/Resultant Company)

Order delivered on 12th December, 2017

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

Appearance:

Miss Dharmishta Raval, Advocate, of M/s Raval & Raval, Advocates, with
Mr. Yuvraj Thakore, Advocate, for the Applicant Company.

COMMON ORDER

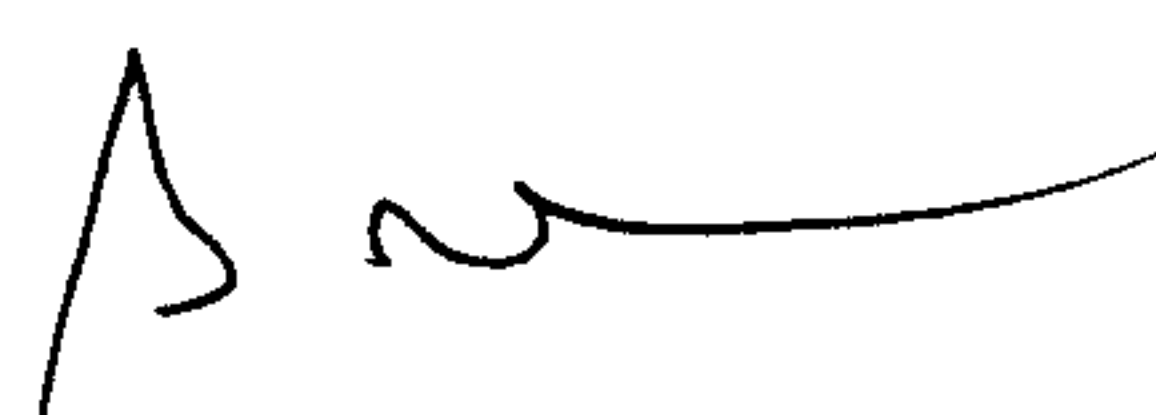
1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Arrangement in the nature of Demerger and Amalgamation between Sanghi Infrastructure Limited (Petitioner Amalgamating Company 1) and Shreenathji Voyage Private Limited (Petitioner Amalgamating Company 2) and Balaji Voyage Private Limited (Petitioner Amalgamating Company 3) and Navdurga Voyage

Private Limited (Petitioner Amalgamating Company 4) and Enrich Steels Private Limited (Petitioner Demerged Company) and Kachchh Hospitality Private Limited (Petitioner Resultant Company or Petitioner Amalgamated Company) ['Scheme' for short].

2. The Petitioner of CP (CAA) No. 75 of 2017, i.e. Sanghi Infrastructure Limited, filed an application before this Tribunal, being CA(CAA) No.39 of 2017, seeking dispensation of meetings of the Equity Shareholders and Secured as well as Unsecured Creditors of the said Company. This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meeting of the Equity Shareholders in view of the consent letters given by the Equity Shareholders. This Tribunal also held that there was no need to hold meetings of Secured Creditors and Unsecured Creditors of the Petitioner Company as there were no Secured or Unsecured Creditors of the Petitioner Company as on the date of filing of the application. While disposing of the said application, this Tribunal directed Petitioner Amalgamating Company 1 to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iv) the Official Liquidator concerned 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 would be presumed that they have no objection to make on the proposed Scheme. Accordingly, Petitioner Amalgamating Company 1 after serving notices on the statutory authorities, filed proof of service.

3. The Petitioner of CP (CAA) No. 76 of 2017 i.e. Shreenathji Voyage Private Limited, filed an application before this Tribunal, being CA(CAA) No.40 of 2017, seeking dispensation of meetings of the Equity Shareholders and Secured as well as Unsecured Creditors of the said Company. This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meeting of the Equity Shareholders in view of the consent letters given by the Equity Shareholders. This Tribunal also held that there was no need to hold meetings of Secured Creditors and Unsecured Creditors of the Petitioner Company as there were no Secured or Unsecured Creditors of the Petitioner Company as on the date of filing of the application. While disposing of the said application, this Tribunal directed Petitioner Amalgamating Company 2 to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iv) the Official Liquidator concerned 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 would be presumed that they have no objection to make on the proposed Scheme. Accordingly, Petitioner Amalgamating Company 2 after serving notices on the statutory authorities, filed proof of service.

4. The Petitioner of CP (CAA) No. 77 of 2017, i.e. Balaji Voyage Private Limited, filed an application before this Tribunal, being CA(CAA) No.41 of 2017, seeking dispensation of meetings of the Equity Shareholders and Secured as well as Unsecured Creditors of the said Company. This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meetings of the Equity Shareholders and Unsecured Creditors in view of the consent letters given by the Equity Shareholders and Unsecured Creditors. This Tribunal also held that there was no need to hold meeting of Secured Creditors of the Petitioner Company as there were no Secured Creditors of the Petitioner Company as on the date of filing of the application. While disposing of the said application, this Tribunal directed the Petitioner Amalgamating Company 3 to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iv) the Official Liquidator concerned stating that representations, if any, to be



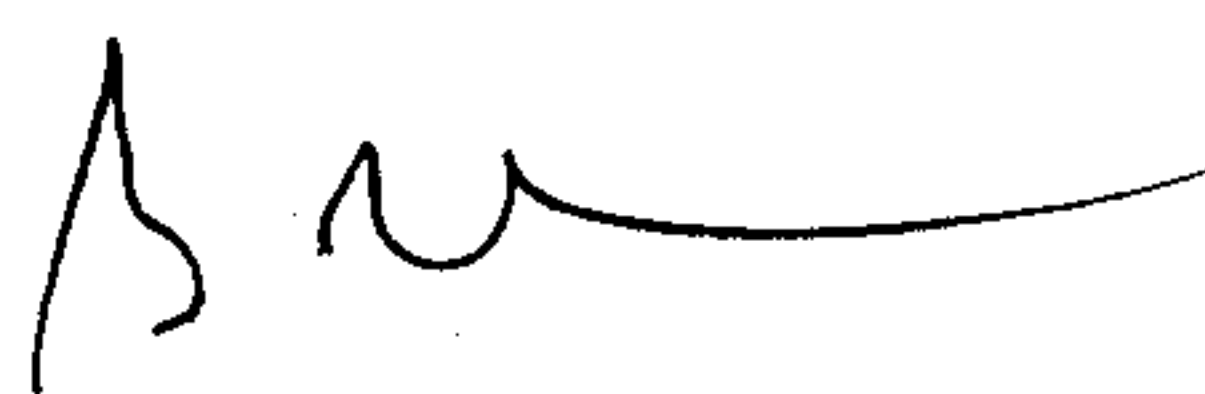
made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which it would be presumed that they have no objection to make on the proposed Scheme. Accordingly, the Petitioner Amalgamating Company 3, after serving notices on the statutory authorities, filed proof of service.

5. The Petitioner of CP (CAA) No. 78 of 2017, i.e. Navdurga Voyage Private Limited, filed an application before this Tribunal, being CA(CAA) No.42 of 2017, seeking dispensation of meetings of the Equity Shareholders and Secured Creditors and directions for holding meeting of Unsecured Creditors of the said company for the purpose of considering and, if thought, fit approving the Scheme with or without modification(s). This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meeting of the Equity Shareholders in view of the consent letters given by the Equity Shareholders. This Tribunal held that there was no need to hold meeting of Secured Creditors of the Petitioner Company as there were no Secured Creditors of the Petitioner Company as on the date of filing of the application. This Tribunal also issued directions for the purpose of holding meeting of Unsecured Creditors of the Petitioner Amalgamating Company 4. While disposing of the said application, this Tribunal directed the Petitioner Amalgamating Company 4 to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iv) the Official Liquidator concerned 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 would be presumed that they have no objection to make on the proposed Scheme. Accordingly, the Petitioner Amalgamating Company 4, after serving notices on the statutory authorities, filed proof of service. After convening the meeting of Unsecured Creditors, the Chairman of the meeting filed report before this Tribunal on 4th July, 2017.

6. The Petitioner of CP (CAA) No. 79 of 2017, i.e. Enrich Steels Private Limited, filed an application before this Tribunal, being CA(CAA) No.43 of 2017, seeking dispensation of meetings of the Equity Shareholders and Preference Shareholders and directions for holding meetings of Secured and Unsecured Creditors of the said Company. This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meetings of the Equity Shareholders and Preference Shareholders of the company in view of the consent letters given by the Equity Shareholders and Preference Shareholders. So far as the Secured Creditors and Unsecured Creditors of the company were concerned, this Tribunal issued directions for holding their meetings. While disposing of the said application, this Tribunal



directed the Petitioner Demerged Company to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iv) the Official Liquidator concerned 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 would be presumed that they have no objection to make on the proposed Scheme. Accordingly, the Petitioner Demerged Company after serving notices on the statutory authorities, filed proof of service. After convening meetings of the Creditors, the Chairman of the meeting filed report dated 29.06.2017 before this Tribunal on 4th July, 2017. In the said report, the Chairman stated that though meeting of Secured Creditors was convened, none remained present.

7. The Petitioner of CP (CAA) No. 80 of 2017, i.e. Kachchh Hospitality Private Limited, filed an application before this Tribunal, being CA(CAA) No.44 of 2017, seeking dispensation of meetings of the Equity Shareholders and Secured as well as Unsecured Creditors of the said Company. This Tribunal, vide order dated 12th May, 2017, dispensed with the convening and holding of the meeting of the Equity Shareholders in view of the consent letters given by the Equity Shareholders. This Tribunal

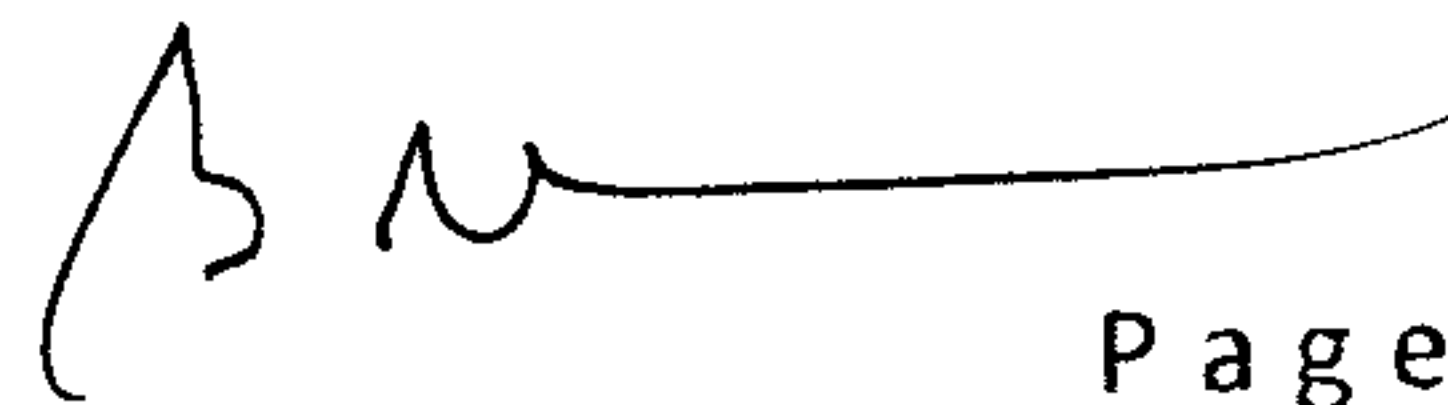


also held that there was no need to hold meetings of Secured Creditors and Unsecured Creditors of the Petitioner Company as there were no Secured or Unsecured Creditors of the Petitioner Company as on the date of filing of the application. While disposing of the said application, this Tribunal directed the Petitioner Amalgamated/Resultant Company to send notice in Form No.CAA.3 along with copy of the Scheme of Arrangement, 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 and (iii) the Income Tax Authorities 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 would be presumed that they have no objection to make on the proposed Scheme. Accordingly, the Petitioner Amalgamated/Resultant Company, after serving notices on the statutory authorities, filed proof of service.

8. The Petitioner Companies, thereafter, on 20th July, 2017 filed present petitions before this Tribunal seeking sanction of the Scheme approved by the Board of Directors of the Petitioner Companies. These petitions came up on Board for the first time on 2nd August, 2017 and, at the request of learned counsel for the petitioners, these petitions were adjourned from time to time. On 3rd October, 2017, the petitioner of Company Petition No.79 of 2017 (Applicant of Company Application No.43 of 2017) filed

an Interlocutory Application, being IA No.324 of 2017, seeking dispensation of meeting of Secured Creditors of the Applicant Demerged Company in view of the fact that when the meeting of Unsecured Creditors was convened, representatives of the two Unsecured Creditors of the company could not remain present and, thereafter, as the Petitioner Demerged Company repaid the entire loan amount, as on the date of filing of the said I.A., there were no Secured Creditors of the company. This Tribunal, vide order dated 10th October, 2017, allowed the said Interlocutory Application.

9. Thereafter, this Tribunal, vide order dated 8th November, 2017, while admitting the petitions, ordered that notice of hearing of the petitions shall be advertised in English Daily Newspaper, "Indian Express" and Gujarati Daily Newspaper, "Sandesh", both Ahmedabad edition, not less than ten days before the date fixed for hearing, calling for their objections, if any, on or before the date of hearing. This Tribunal also ordered issuance of notice to (a) the Regional Director (b) the Registrar of Companies, Gujarat; and (c) the Official Liquidator [in CP (CAA) Nos. 39 to 43 of 2017], asking them to file their representations, if any, within 30 days from the date of receipt of notice with a condition that in case no representation was received by this Tribunal, it would be presumed that the above said authorities have no representation to make on the proposed Scheme of Arrangement.



10. Accordingly, the Petitioner Companies published notice of hearing of the petitions in English Daily, "Indian Express" and Gujarati Daily, "Sandesh" both Ahmedabad Editions, on 15th November, 2017. Notices of hearing of the petitions were also served upon the statutory authorities, namely, the Regional Director; and the Registrar of Companies on 16th November, 2017 and the Official Liquidator on 15th November, 2017 and affidavits of service and publication dated 22nd November, 2017 have been filed by the Authorized Signatory the Petitioner Companies.

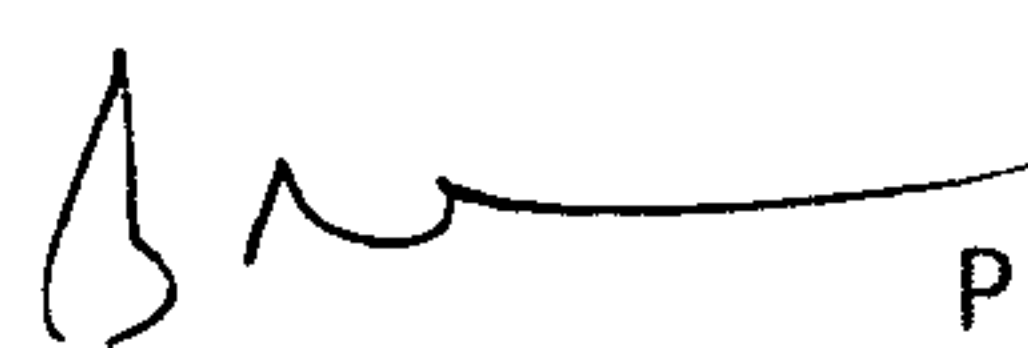
11. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 22nd July, 2017. The Official Liquidator filed representations dated 4th August, 2017. In response to the notice to the Income Tax Authorities, Deputy Commissioner of Income Tax, Circle-3(1)(1), Ahmedabad, filed a representation on 15th June, 2017. 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.

12. In response to the common representation filed by the Regional Director, the Petitioner Company in CP(CAA) No.79 of 2017 has filed a reply affidavit dated 22nd November, 2017. The Petitioner Amalgamating Companies have filed reply affidavit

dated 28th November, 2017 to the representation filed by the Official Liquidator. The Petitioner of CP(CAA) No.78 of 2017, Navdurga Voyage Private Limited, has filed a reply dated 22nd November, 2017 to the representation of the Income Tax Department.

13. Heard learned Advocate Ms. Dharmishta Raval with learned Advocate, Mr. Yuvraj Thakore for the Petitioner Companies.

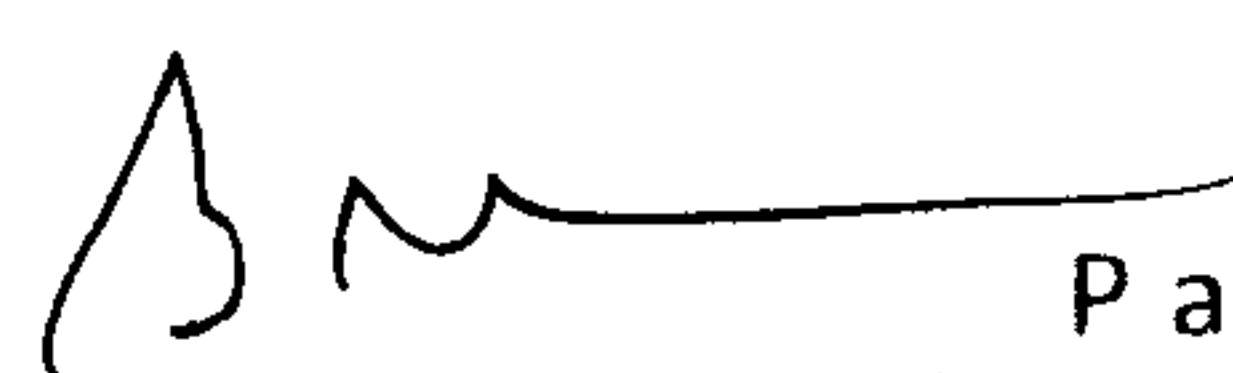
14. Learned Advocate for the petitioners has submitted that the Regional Director, in paragraphs 2(a) to 2(c), has not made any observations except dealing with the jurisdictional and factual aspects. In response to the observation made by the Regional Director in paragraph 2(d) that there are Preference Shareholders in the Petitioner Demerged Company, namely, M/s Enrich Steels Limited, and the Resulting Company has not proposed any share exchange ratio to such Preference Shareholders, it is submitted in the affidavit filed on behalf of the Petitioner Demerged Company that the said Petitioner Company is a Demerged Company and only one of its businesses, namely, Steel Division, is getting transferred, after which the Demerged Company continues to remain in existence with its other business assets. It is further submitted that there is capital reduction of the Demerged Company whereby Preference Share Capital will be reduced. The Preference Shareholders of the



Demerged Company have expressed their desire to continue to remain with the Demerged Company and, hence, in the proposed Scheme, there is no exchange of shares or consideration being paid to the Preference Shareholders. Preference Shareholders of the Demerged Company have given their consent to the Scheme. It is also submitted that, Exchange Ratio, being privy of agreement between the company and its shareholders, should not be questioned once it is approved by the shareholders themselves. In light of the above, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(d) of the representation stands satisfied.

15. In paragraph 2(e) of the representation, the Regional Director has stated that report of the Registrar of Companies has been received and, as per the said report, there were no complaints against the Petitioner Companies and there was no complaint /representation against the Scheme of Arrangement of the Petitioner Companies. The Regional Director has further stated the Scheme of Arrangement is not prejudicial to the interest of the Petitioner Companies and the public at large.

16. In response to the observation made by the Official Liquidator in Paragraph 13 of the representation, it is stated in the reply dated 28th November, 2017 that the Petitioner Companies shall preserve books of accounts, papers and records and shall not dispose of the same without the prior permission



of the Central Government as per the provision of Section 239 of the Companies Act, 2013.

17. In Paragraph 14 of the representation, the Official Liquidator has requested the Tribunal to direct the Petitioner Companies to ensure statutory compliance of all applicable laws and also on sanctioning of the Scheme, the Petitioner Companies shall not be absolved from any of their statutory liabilities in any manner. The Petitioner Transferor Companies have stated in the reply at paragraph 2(ii) that the Petitioner Companies ensure statutory compliance of all applicable laws and that the Petitioner Companies shall not be absolved from any of their statutory liabilities. However, it is observed that upon sanctioning of the Scheme, the Petitioner Amalgamating Companies shall not be absolved from any of their statutory liabilities, in any manner.

18. In Paragraph 16 of the representation, the Official Liquidator has requested the Tribunal to direct the Petitioner Companies 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 the reply given in Paragraph 2(iii) of the affidavit, the Petitioner Transferor Companies have stated that the Petitioner Companies shall comply with Rule 17(2) of the Companies (Compromises,

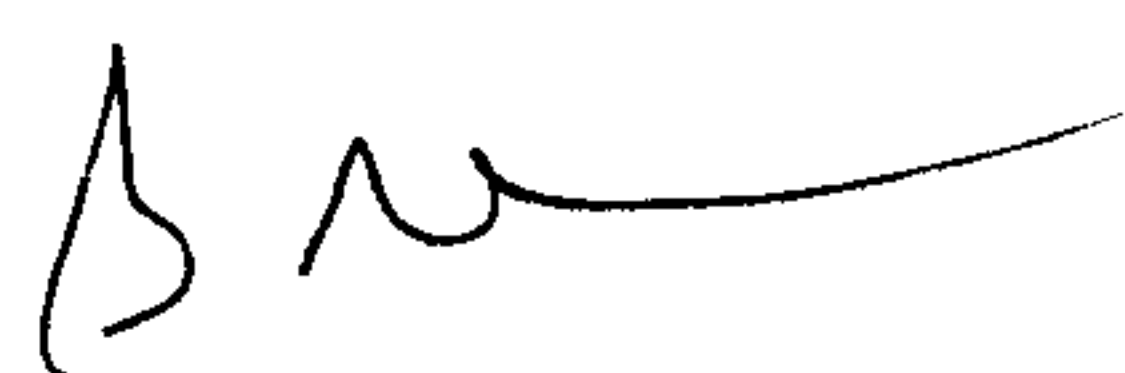


Arrangements and Amalgamations) Rules, 2016 with respect to filing of the Order of Confirmation of the Scheme in Form No. INC-28 with the Registrar of Companies having jurisdiction over the Petitioner Companies involved.

19. In light of the aforesaid, this Tribunal is of the view that the observations made by the Official Liquidator in his representation, stand satisfied.

20. The Official Liquidator has also requested the Tribunal to direct the Petitioner Transferor Companies to pay cost of Rs. 10,000/- each to the office of the Official Liquidator.

21. In response to the notice to Income Tax Department, Deputy Commissioner of Income Tax, Circle-3(1)(1), Ahmedabad filed a representation dated 13.06.2017, wherein it is stated that an amount of Rs.25,72,453/- is outstanding in the case of Navdurga Voyage Private Limited, i.e. Petitioner of CP(CAA) No.78 of 2017. In the reply dated 22nd November, 2017 filed by the Petitioner Company, it is stated that upon sanctioning of the Scheme by this Tribunal, the rights, assets and all other immovable property of the Petitioner Company shall vest in the Transferee Company. It is further stated in the reply that, in clause 4.9 of the Scheme, it is stated that all tax compliance to be made by the Petitioner Company referred to as the Amalgamating Company 4 shall be deemed to be made by the

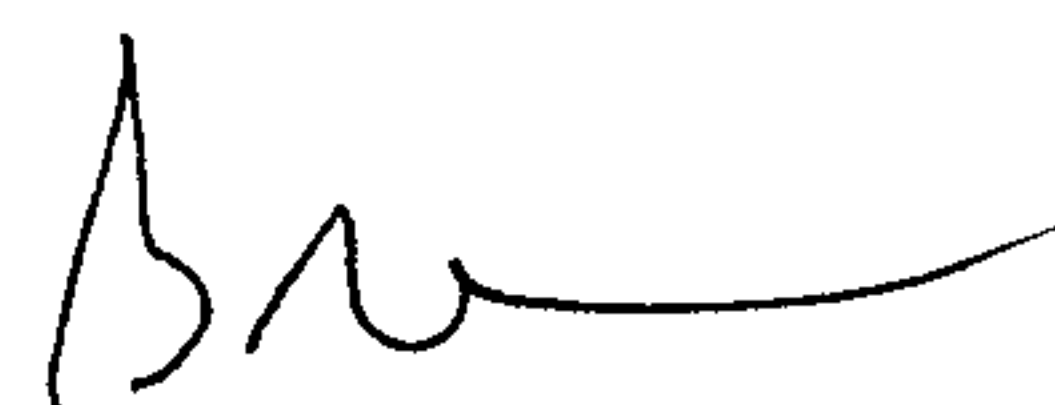


Amalgamated Company. It is also stated in the reply that upon sanctioning of the Scheme, the Amalgamated Company shall take over all the responsibilities and liabilities of payment of taxes by the Petitioner Company. The Petitioner Company has given an undertaking to comply with all the applicable laws. In light of the above, this Tribunal is of the view that the observation made by the Income Tax Authorities stands satisfied.

22. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers.

23. The petitioner companies have produced on record copies of certificates issued by their Auditors stating that the accounting treatment contained in the Scheme is in compliance with all the applicable Accounting Standards notified by the Central Government under Section 133 of the Companies Act, 2013.

24. 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.

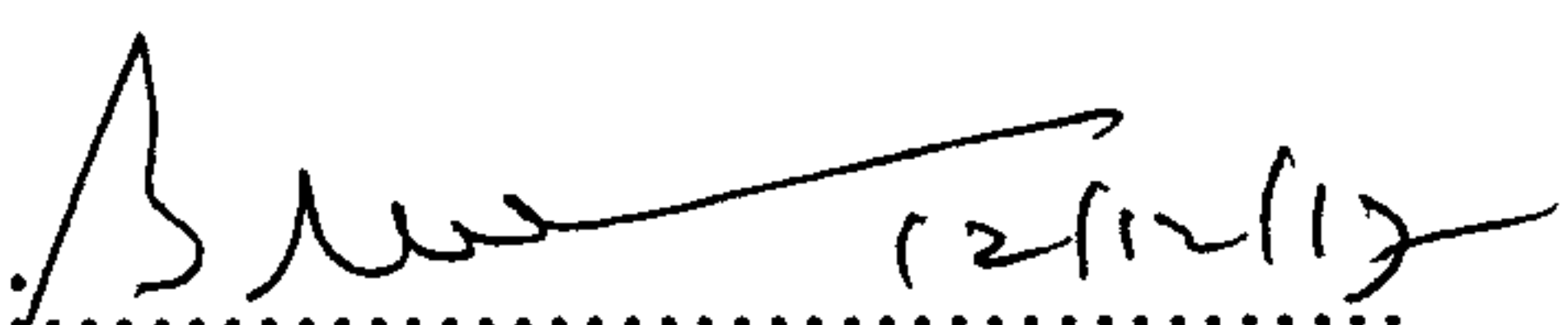


25. In the result, these Petitions are allowed. The Amended Scheme of Arrangement which is at Annexure-I to CP(CAA) Nos.75, 77, 78 & 79, Annexure-H to CP(CAA) No.76 of 2017 and Annexure-E to CP(CAA) No.80 of 2017 is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies their Equity Shareholders, Preference Shareholders, Creditors and all concerned under the Scheme. It is also declared that the Petitioner Companies, namely, (1) Sanghi Infrastructure Limited, (2) Shreenathju Voyage Private Limited, (3) Balaji Voyage Private Limited and (4) Navdurga Voyage Private Limited shall stand dissolved without winding up.

26. The fees of the Official Liquidator are quantified at Rs. 10,000/- each in respect of CP (CAA) Nos. 75 to 78 of 2017. The said fees to the Official Liquidator shall be paid by the Amalgamated/Resultant Company.

27. 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.

28. These Company Petitions are disposed of accordingly.

Signature:  (2/12/17)
[Bikki Raveendra Babu, Member (J)]