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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP (CAA) No. 123/NCLT/AHM/2017
CA (CAA) No. 96/NCLT/AHM/2017**

Coram:

**Present: Hon'ble Ms. MANORAMA KUMARI
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.12.2017**

Name of the Company:

Siwana Agri Marketing Ltd
Kauvery Trexim Pvt Ltd.
Stuti Trademart Pvt. Ltd.
Vital Connections Pvt. Ltd.
(Joint Application)

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>
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2.

ORDER

None present for Petitioner.

Order pronounced in open Court. Vide separate sheets.

**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 15th day of December, 2017.

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

CP (CAA) No.123/NCLT/AHM/2017

In the matter of:-

Siwana Agri Marketing Limited
Having its registered office at
401, AshopalavAppartment,
Near Suvidha Shopping Centre,
Paldi Ahmedabad.

Applicant
(Transferor Company 1)

Kauvery Trexim Private Limited
Having its registered office at
26, Padamnagar Society Highway Road,
Sabarmati, Ahmedabad - 380 005.

Applicant
(Transferor Company 2)

Stuti Trademart Private Limited
Having its registered office at
10, Amizara C H S Ltd.,
Sabarmati, Ahmedabad - 380 005.

Applicant
(Transferor Company 3)

Vital Connections Private Limited
Having its registered office at
10, Amizara C H S Ltd.,
Sabarmati, Ahmedabad - 380 005.

Applicant
(Transferee Company)

Order delivered on 15th December, 2017

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

Appearance:

Mr. Ravi Kapoor, Practicing Company Secretary for the applicant companies.

ORDER

1. By this joint petition under Sections 230 and 232 of the Companies Act, 2013, the petitioner companies are seeking sanction of this Tribunal to a Composite Scheme of Arrangement between Siwana Agri Marketing Limited (Transferor Company 1) and Kauvery Trexim Private Limited (Transferor Company 2) and

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Stuti Trademart Private Limited (Transferor Company 3) with Vital Connections Private Limited (Transferee Company) and their respective shareholders and creditors ("Scheme" for short).

1. The Petitioner Companies had filed the proceedings before this Tribunal in form of a joint application, being CA(CAA) No. 96 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 approving the proposed Scheme. Similarly, all Unsecured Creditors of the all Petitioner Companies had submitted written consent letters approving the proposed Scheme. It was further submitted that there were no Secured Creditors of any of the Petitioner Companies. Hence, this Tribunal, vide order dated 6th September 2017 passed in CA (CAA) No.96 of 2017, dispensed with meetings of shareholders and unsecured creditors of all the Petitioner Companies. Since there were no Secured Creditors of any of the Petitioner Companies, as certified by Chartered Accountants, it was held that there was no need to hold their meetings.

2. Vide the aforesaid order dated 6th September, 2017, the Petitioner Companies were also directed to serve Notice of the Scheme to the Regulatory Authorities viz. (i) Central Government through the Regional Director, North-Western Region, (ii)

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Registrar of Companies, Gujarat (iii) The Income Tax Authorities and (iv) The Official Liquidator (only in respect of the transferor companies) along with a copy of the Scheme of Arrangement, explanatory statement and the disclosures mentioned under the Rule 6 of the Companies (CAA) Rules, 2016. The notices were duly served on all the authorities on or before 12th September 2017. An affidavit dated 18th September 2017 confirming compliance of the said directions for service of notice on all the above Regulatory Authorities along with the acknowledgements 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 18th October, 2017 with certain observations and representation dated 16th October, 2017 were received from the Official Liquidator. No Representation was received either from the Income Tax Authorities or from any other regulatory authority.

3. The Petitioner Companies, thereafter, filed the present joint petition on 10th November 2017. This Tribunal vide order dated 20th November 2017, while admitting the petition, issued directions to the petitioner companies to publish notice of hearing of petition in the newspapers viz. English daily, Business Standard and Gujarati daily Jai Hind, both Ahmedabad Edition, at least 10 days of the date of hearing of the petition. Further, directions were also issued to serve notice of hearing of the petitions to the statutory authorities viz. (i) Central Government

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through Regional Director-North Western Region, and (ii) Official Liquidator for the Transferor Companies, at least 10 days before the date of hearing of petition. By the said order dated 20th November, 2017, the date of hearing was fixed as 7th December 2017.

4. Pursuant to said directions, notices were duly served by the Petitioner Companies to the statutory authorities on 24th November 2017 and publications were duly made in the newspapers on 27th November 2017. Affidavit of service and publication dated 30th November 2017 confirming the same has been placed on record.

5. Heard Mr. Ravi Kapoor, Practicing Company Secretary, appearing for the Petitioner Companies.

6. It has been submitted that representation in form of the affidavit dated 18th October 2017 has been received from the Regional Director for the petitioner companies. The Petitioner Companies have filed affidavit 16th November 2017 in response to the representation.

(i) It has been observed by the Regional Director that the Transferee Company shall be required to make payment of difference of amount of fees which is payable on the enhanced Authorised Share Capital of Rs.54,00,000/- as on date and the

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total payable amount of fees which have already been paid by all the petitioner Companies at the time of registration/increase in authorized share capital, as the case may be. 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.

(ii) It is further observed by Regional Director that there appears no justification/ logic in keeping two appointed date in the Scheme and Petitioner Companies may be directed to change the scheme. In this regard, it has been clarified by the Petitioner Companies that there is no justification in amending the scheme to change the appointed date as at the outset the same has been approved by all the applicable stakeholders and is in line with the precedents in this regards and secondly the Regional Director has neither brought on record as to how the proposed appointed dates are contrary to law, nor has provided any reason in support of his contention.

(iii) It is further observed by the Regional Director in Para i that Petitioner Company, M/s. Siwan Agri Marketing Limited, has bought back 3404 Equity Shares during the F.Y. 2016-17 and the whole amount of security premium account, being Rs.1,63,35,000/-, has also been reduced on account of said buy back. It has been submitted by Petitioner Companies that the

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same is permissible under the provisions of Section 52(2)(e) of the Companies Act, 2013.

(iv) In light of the above, this Tribunal is of the view that the observations made by the Regional Director stand satisfied.

7. In response to the notice of the petition served upon the Office of the Official Liquidator for the Transferor companies, separate representations dated 16th 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 their 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 liabilities.

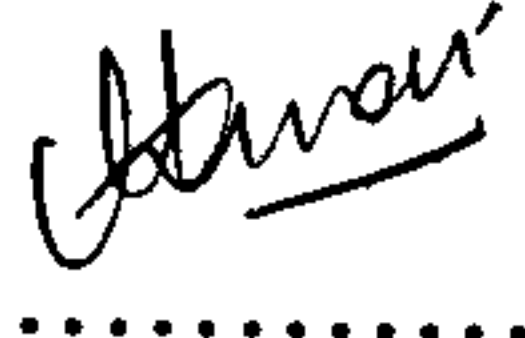
8. No representation has been received from the Income Tax Authorities. Hence, it is assumed that the said authorities have no objection to the proposed Scheme.

9. In compliance with the proviso to sub-section (7) of Section 230, the petitioner companies have placed on record the certificates of Chartered Accountant 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- 'K' to the petition.

10. 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.

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11. As a result, this petition, being C P (CAA) No. 123 of 2017, is allowed. The Scheme which is at Annexure- 'I' to the petition 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. Siwana Agri Marketing Limited, Kauvery Trexim Private Limited and Stuti Trademart Private Limited shall stand dissolved without winding up.
12. The fees of the Official Liquidator are quantified at Rs. 10,000/- each only in respect of the Transferor Companies. The said fees to the Official Liquidator shall be paid by the Transferee Company.
13. 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.
14. This Company petition is disposed of accordingly.

Signature.....
[Ms. Manorama Kumari , Member (J)]

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