

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**C.P. (CAA) No. 23/NCLT/AHM/2017
Gujarat High Court C.A. No. 543/NCLT/AHM/2016**

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

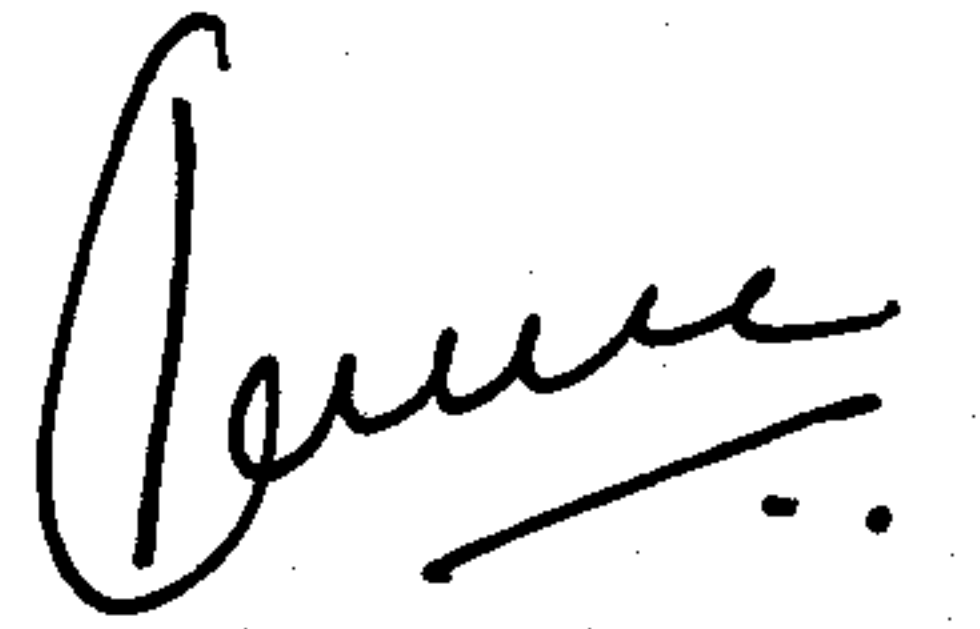
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.06.2017**

Name of the Company: McFills Enterprises Pvt. Ltd.

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

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1. KAVAN KUMAR MANKAD Advocate Petitioner
for
2. Vaibhavi K. Parikh.



ORDER

Learned Advocate Mr. Kavan Kumar Mankad i/b Learned Advocate Ms. Vaibhavi Parikh present for Petitioner.

Common Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 6th day of June, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P. (CAA) No. 23/NCLT/AHM/2017

With

C.P.(CAA) No. 24/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

(Date: 6th day of June, 2017)

In the matter of :

1. McFills Enterprises Private Limited
A Company registered under the Companies Act, 1956 and having its Registered Office at 501, 5th Floor, Shikhar, Near Navrangpura Railway Crossing, Navrangpura, Ahmedabad – 380 009 in the State of Gujarat. ... Petitioner of C. P. (CAA) No. 23/2017 (Transferor Company)

AND

2. MR Organosys Private Limited
A Company registered under the Companies Act, 1956 and having its Registered Office at 501, 5th Floor, Shikhar, Near Navrangpura Railway Crossing, Navrangpura, Ahmedabad – 380 009 in the State of Gujarat. ... Petitioner of C. P. (CAA) No. 24/2017 (Transferee Company)

Appearance: -

Ms. Vaibhavi Parikh, Advocate, for the petitioner-companies.

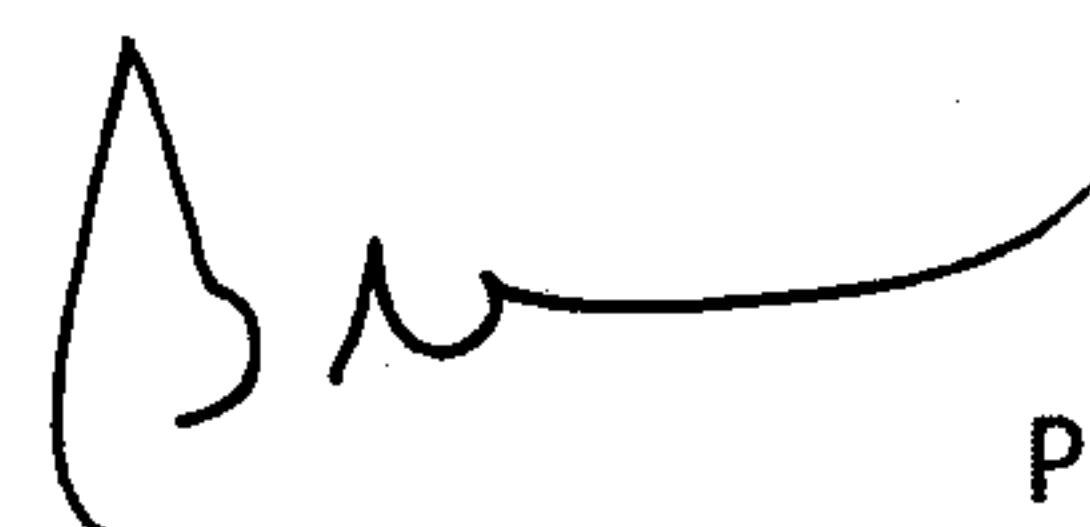
COMMON FINAL ORDER

(Date:06.06.2017)

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 Amalgamation of McFills Enterprises Private Limited (Transferor Company) with MR Organosys Private Limited (Transferee Company) ('Scheme' for short).
2. The Petitioner of C.P. (CAA) No. 23 of 2017, i.e. McFills Enterprises Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No. 543 of 2016, seeking dispensation of the meetings of the Equity Shareholders and sole Secured Creditor of the said Company and

convening of the meeting of the Unsecured Creditors of the said Company. The Honourable High Court, vide order dated 14th December, 2016 dispensed with the convening and holding of the meeting of the Equity Shareholders and sole Secured Creditor of the Petitioner Company in view of the consent letters given by the Equity Shareholders and sole Secured Creditor of the Petitioner Company and ordered for convening a meeting of the Unsecured Creditors of the Company. Pursuant to the directions issued with regard to the conduct of the meeting, after the due service of individual notice to all the Unsecured Creditors, as well as after giving public notice, the said meetings were duly convened on 13th January, 2017. The proposed scheme was considered at the said meeting and it was approved unanimously at the meeting of the Unsecured Creditors, viz. 100% in number and 100% in value. The Chairman's report dated 18th January, 2017 for the said meeting is placed on record confirming the result of the meeting.

3. The Petitioner of C.P. No. 24 of 2017, i.e. MR Organosys Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No. 539 of 2016, seeking dispensation of the meetings of the Equity Shareholders of the said Company. The Honourable High Court, vide order dated 14th December, 2016 dispensed with the convening and holding of the meeting of the Equity Shareholders of the Petitioner Company in view of the consent letters given by the Equity Shareholders of the Petitioner Company. The Hon'ble High Court, vide its aforesaid order dated 14th December, 2016, also ordered that, as the rights and interests of the Creditors of the Petitioner Transferee Company were not likely to be prejudicially affected, the approval of the Creditors of the Transferee Company was not necessary and was, therefore, dispensed with. Further, the procedure prescribed under Section 101(2) of the Companies Act, 1956 and under Rules 46 to 65 of the Companies (Court) Rules, 1959 has also been dispensed with by the Honourable High Court.



4. The Petitioner Companies, thereafter, on 8th March, 2017 filed present petitions before this Tribunal seeking sanction of the Scheme approved by the Board of Directors of the Petitioner Companies. This Tribunal vide order dated 5th April, 2017 while admitting the aforesaid Company Petitions, ordered that notice of hearing of the petitions shall be advertised in the English Daily Newspaper "Indian Express" and Gujarati Daily Newspaper "Jai Hind" both having circulation in Ahmedabad not less than ten days before the fixed date of hearing calling for objections, if any on or before the date of hearing. This Tribunal also ordered issuance of notice to (a) the Central Government through the Regional Director, Gujarat; (b) the concerned Income Tax Authorities; (c) the Registrar of Companies, Gujarat and (d) the Official Liquidator in C.P. (CAA) No. 23 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 is received by this Tribunal, it shall be presumed that the above said authorities have no representation to make on the proposed scheme of amalgamation.

5. Accordingly, the Petitioner Companies published notice of hearing of C.P. (CAA) Nos. 23 and 24 of 2017 in English Daily, "Indian Express" and Gujarati Daily, "Jai Hind" both Ahmedabad Editions on 22nd April, 2017. Notices of hearing of the petitions were also served upon the statutory authorities, namely, (i) the Central Government through the Regional Director, (ii) the concerned Income Tax Authority, (iii) the Registrar of Companies, Gujarat, Ahmedabad, (iv) the Official Liquidator and affidavit of service and publication dated 1st May, 2017 has been filed by the Director of the Petitioner Companies.

6. It is stated in the Petitions that the accounting treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. In support of this statement in the petitions,



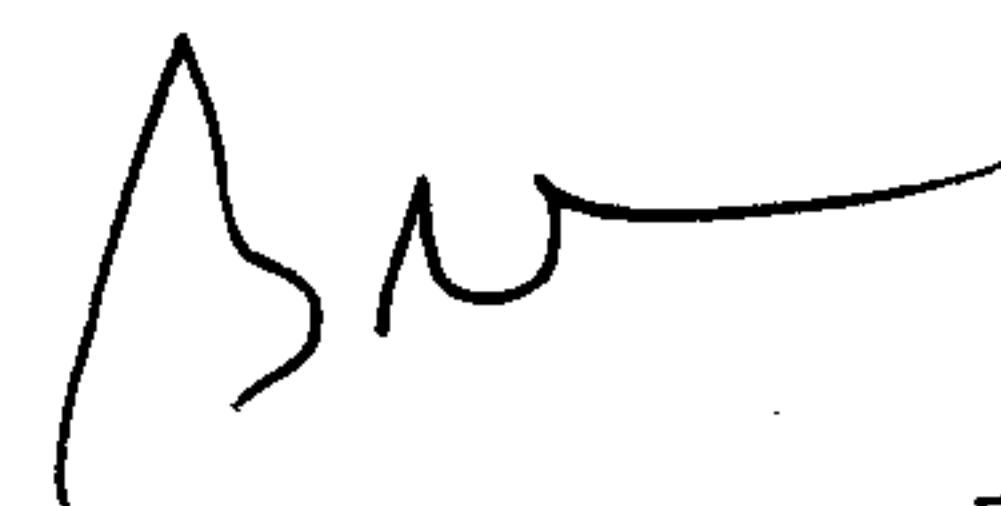
the Petitioner Companies have also produced certificate of Chartered Accountant in the respective petitions.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 2nd May, 2017. The Official Liquidator filed a representation dated 8th May, 2017. However, no representation has been received and/or filed by the Income Tax Authorities before this Tribunal. 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. Likewise, pursuant to the notices issued to the equity shareholders and sole secured creditor in case of the petitioner transferor company and equity shareholders in case of petitioner transferee company (there being no secured and/or unsecured creditor), no shareholder, secured and/or unsecured creditor has raised any objection to the proposed scheme.

8. In response to the common representation filed by the Regional Director, the Petitioner Companies have filed reply affidavit dated 15th May, 2017 in respective petitions. The petitioner transferor company has also filed its reply affidavit dated 15th May, 2017 to the representation filed by the Official Liquidator.

9. Heard learned Advocate Ms. Vaibhavi Parikh for the Petitioner Companies.

10. In Paragraph 2(f) of the common representation filed by the Regional Director, the Regional Director has stated that as per the report of the Registrar of Companies dated 27th April, 2017 there are no complaints against the Petitioner Companies including any complaint/representation against the Scheme of Arrangement of the Petitioner Companies is received by the office of the Registrar of Companies.



11. It is also stated by the Regional Director in Paragraph 2(g) of the common representation that the proposed Scheme is not prejudicial to the interest of shareholders of the Petitioner Companies and the public at large.

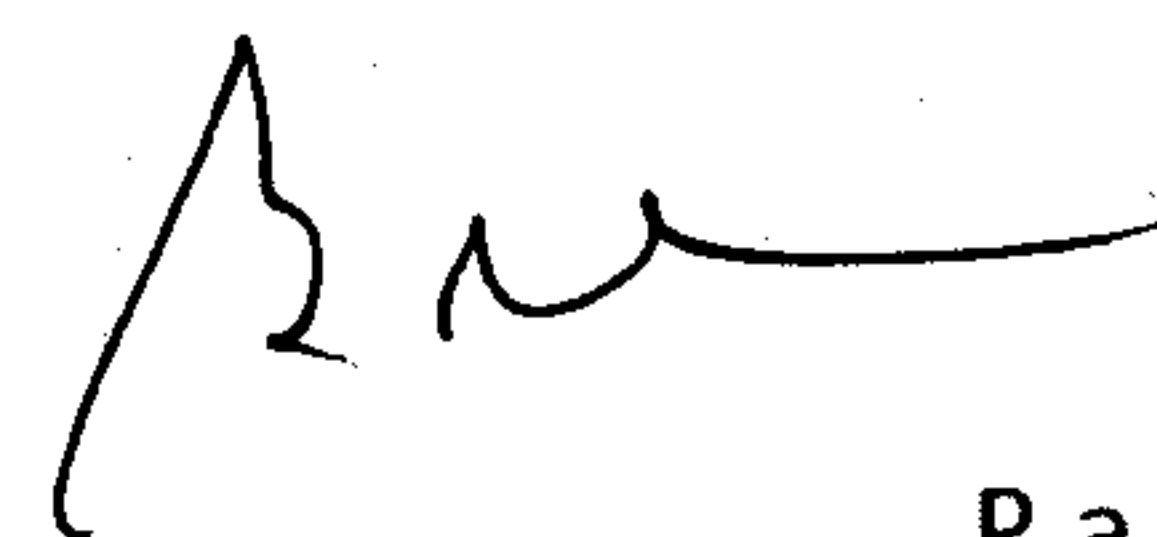
12. In response to the notice to the Official Liquidator in C.P. (CAA) No. 23 of 2017, the Official Liquidator filed his representation dated 8th May, 2017. On perusal of the said report, the Official Liquidator at Paragraph 7 has factually stated with respect to the income tax liability, which is disputed and pending for adjudication before the Commissioner of Income Tax (Appeals), for the financial year 2012-

13. In response to the said facts, the Petitioner Companies have filed undertaking on affidavits dated 18th May, 2017 and 22nd May, 2017, in the respective petitions, stating that the Petitioner Transferee Company shall pay the income tax liability or any part thereof of the Transferor Company, if the same is eventually and finally upheld by the appellate authorities. With regard to the observation made by the Official Liquidator at Paragraph 14 of the report, in Paragraph 7(a) of the affidavit dated 15th May, 2017, it is stated that the Petitioner Transferor Company undertakes to preserve its 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. In Paragraph 15 of the report, the Official Liquidator has requested the Tribunal to direct the Petitioner Company to ensure statutory compliance of all applicable laws and also on sanctioning of the Scheme, the Petitioner Company be not absolved from any of its statutory liability in any manner. In reply given in Paragraph 7(b) of the Affidavit, the Petitioner Transferor Company has stated that the Petitioner Transferor Company ensures statutory compliance of all applicable laws and that the Petitioner Transferor Company shall not be absolved from any of its statutory liability. However, it is observed that upon sanctioning of the Scheme, the Petitioner Transferor Company shall not be absolved from any of its statutory liability, in any manner. In Paragraph 17 of the report, the Official Liquidator has requested the Tribunal to direct the

Petitioner Transferor Company to comply with Rule 17(2) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of order, if any, for confirmation of the scheme in form no INC-28 with the Registrar of Companies. In the reply given in Paragraph 7(d) of the Affidavit, the Petitioner Transferor Company has stated that the Petitioner Transferor Company shall comply with Rule 17(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of the order, if any, for confirmation of the scheme in form no INC-28 with the Registrar of Companies. The Official Liquidator requested the Tribunal to direct the Petitioner Transferor Company to pay cost of Rs. 10,000/- to the office of the Official Liquidator. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers. In light of the aforesaid, this Tribunal is of the view that the observations made by the Official Liquidator in his representation, stand satisfied.

13. 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.


14. In the result, these Petitions are allowed. The Scheme of Amalgamation which is at Annexure – C to the petitions, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies, namely, McFills Enterprises Private Limited and MR Organosys Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the Petitioner Company, namely, McFills Enterprises Private Limited, shall stand dissolved without winding up.



15. The fees of the Official Liquidator are quantified at Rs. 10,000/- in respect of C.P. (CAA) No. 23 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

16. 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.

17. These Company Petitions are disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court
on this 6th day of June, 2017.

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