

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 5/230-232/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 15.02.2017**

Name of the Company: Cadila Healthcare Ltd.

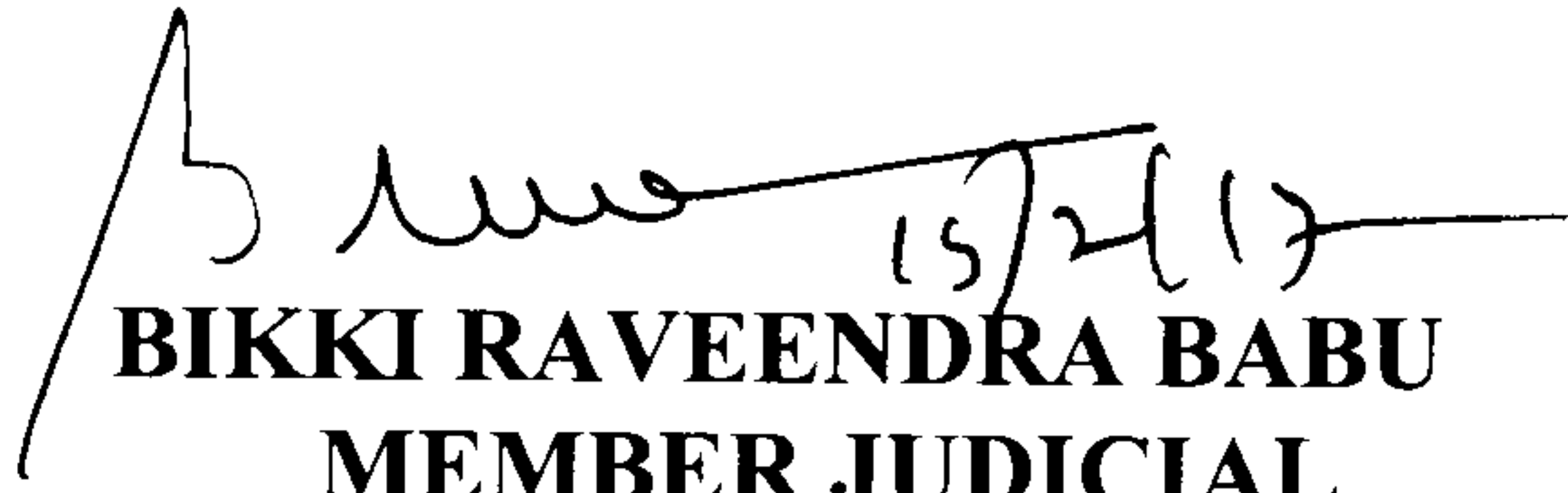
Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Sandeep Singhi	Advocate	Applicant	} 
2.	Pranjal Buch for Singhi & Co.	Advocate	"	

ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Pranjal Buch present for Applicant.

Order pronounced in open Court vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 15th day of February, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 15th day of February, 2017

C.A.(CAA) 5/230-232/NCLT/AHM/2017

In the matter of: -

Cadila Healthcare Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at Zydus Tower,
Satellite Cross Roads,
Sarkhej-Gandhinagar Highway,
Ahmedabad - 380 015.

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Applicant.

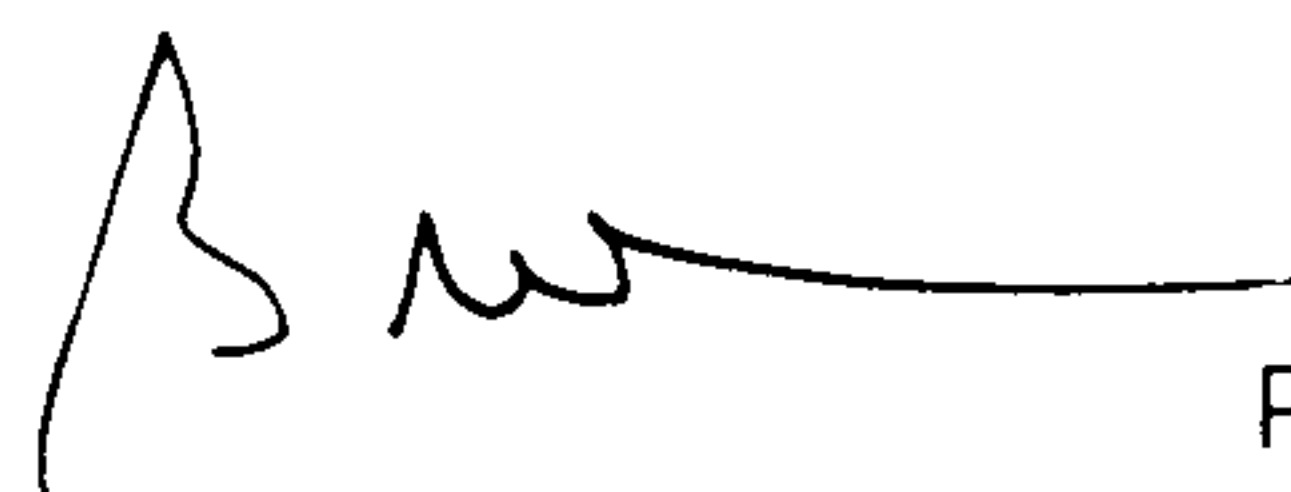
Appearance: -

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

FINAL ORDER

(Date:15.02.2017)

1. Cadila Healthcare Limited (hereinafter referred to as "Transferor Company" or "CHL", as the context may admit) is a public limited listed company, having its registered office at Zydus Tower, Satellite Cross Roads, Sarkhej-Gandhinagar Highway, Ahmedabad – 380 015.
2. Zydus Healthcare Limited (hereinafter referred to as "Transferee Company" or "ZHL", as the context may admit) is an unlisted public limited company, having its registered office at Zydus Tower, Satellite Cross Roads, Sarkhej-Gandhinagar Highway, Ahmedabad – 380 015.
3. The issued subscribed and paid up share capital of CHL is 102,37,42,600/-.



4. The issued subscribed and paid up share capital of ZHL is 736,92,70,200/-. The Transferee Company is the wholly owned subsidiary of the Transferor Company.

5. In the Scheme of Arrangement between the Transferor Company and the Transferee Company, it is proposed to transfer the India Human Formulations Undertaking of CHL to ZHL.

6. Learned Advocate appearing for the Applicant-company contended that, although the Transferee Company is a wholly owned subsidiary of the Transferor Company, Section 233 of the Companies Act, 2013 is not applicable for the following reasons: -

- (1) It is a case of de-merger or transfer of Indian Human Formulations Undertaking from the Transferor Company to the Transferee Company.
- (2) The Transferor Company and the Transferee Company are not small companies.
- (3) Section 233(9) of the Companies Act gives option to the company to adopt the procedure laid down under Section 232.
- (4) There is no winding up of Transferor Company as contemplated under sub-section (3) and sub-section (7) in view of sub-section (8) of Section 233 of the Companies Act.

7. A perusal of the application and its annexures goes to show that the transfer of India Human Formulations Undertaking from the Transferor Company to the Transferee is proposed to take effect only after the amalgamation of Biochem Pharmaceuticals Industries Limited, a wholly owned subsidiary of the Transferor Company, with

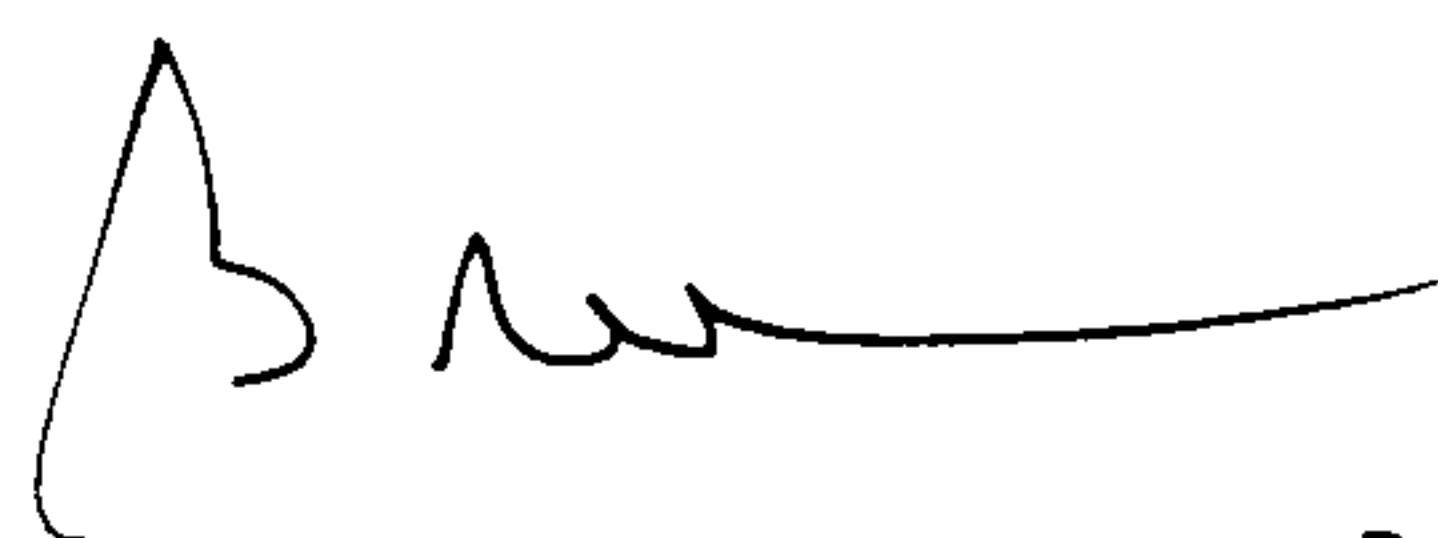
the Transferee Company, i.e. ZHL, and the sanction of the said scheme of amalgamation is also pending before this Tribunal.

8. Considering all the above aspects, it is not a case of amalgamation of the holding company with the subsidiary company. Even if the proposed scheme is accepted, both the Transferor Company and the Transferee Company shall remain in existence, which is not contemplated in case of the registration under sub-section (3) and sub-section (7) in view of sub-section (8) of Section 233.

9. Moreover, sub-section (14) of Section 233 also gives option to a company to use Section 232. In view of the above said facts, this Tribunal has got jurisdiction to entertain this application.

10. In this application, CHL has prayed for the following reliefs: -

- (a) permit it to convene and hold separate meetings of its equity shareholders, secured creditors and unsecured creditors and, if thought fit, approve with or without modification, the composite scheme of arrangement between CHL and ZHL and their respective shareholders and creditors;
- (b) issue necessary directions as to the method of convening, holding and conducting of the aforesaid meetings including the fixation of day, date, time and venue of the meetings and for directions as to the notices and advertisements to be issued in that behalf;
- (c) appoint Chairman including Scrutinizer for the aforesaid meetings of the Applicant-company and in respect of adjournments thereof and to direct the Chairman to report the result of the meetings to this Tribunal;



- (d) fix the quorum for the said meetings and to lay down the procedure for voting at the meetings, including voting by proxy;
- (e) issue necessary directions for publication of notices of the said meetings in Indian Express (All editions) in the English language and a Gujarati translation thereof in Sandesh (Ahmedabad edition) or such other newspaper; and
- (f) issue necessary directions in view of the averments made in paragraphs iv.27 to iv.38 of the application.

11. Heard learned Advocates Mr. Sandeep Singhi and Mr. Pranjal Buch for M/s Singhi & Company, Advocates for the Applicant-company. Perused the application and the supporting affidavit of Mr. Upen Shah, Senior General Manager and Company Secretary of the Applicant-company, dated 30.01.2017 and the annexures annexed thereto.

12. The Transferor Company obtained Valuation Report, Fairness Opinion, report of the Audit Committee of CHL vide Annexures H, I and J, respectively.

13. The Board of Directors of the Transferor Company and the Transferee Company passed resolutions approving the scheme vide Annexure K and L, respectively. BSE and NSE issued No Adverse Observations/No Objection letters dated 20th January, 2017 to CHL vide Annexure N. Statutory Auditor of CHL issued certificate under Section 133 of the Companies Act dated 30th November, 2016 vide Annexure P. Statutory Auditor issued certificate dated 17th November, 2016 in respect of non-applicability of paragraph 9(a) of SEBI Circular dated 30th November, 2015 (Annexure R) basing on the undertaking in relation to non-applicability of requirements prescribed in para (1)(A)9(a) of Annexure 1 of SEBI Circular No.CIR/CFD/CMD/16/2015 dated 30.11.2015. It is stated in the

application that no investigation has been instituted or pending in relation to the Transferor Company or the Transferee Company under Chapter XIV of the Companies Act, 2013. It is also stated in the application that no winding up proceedings are filed or pending either against the Transferor Company or against the Transferee Company.

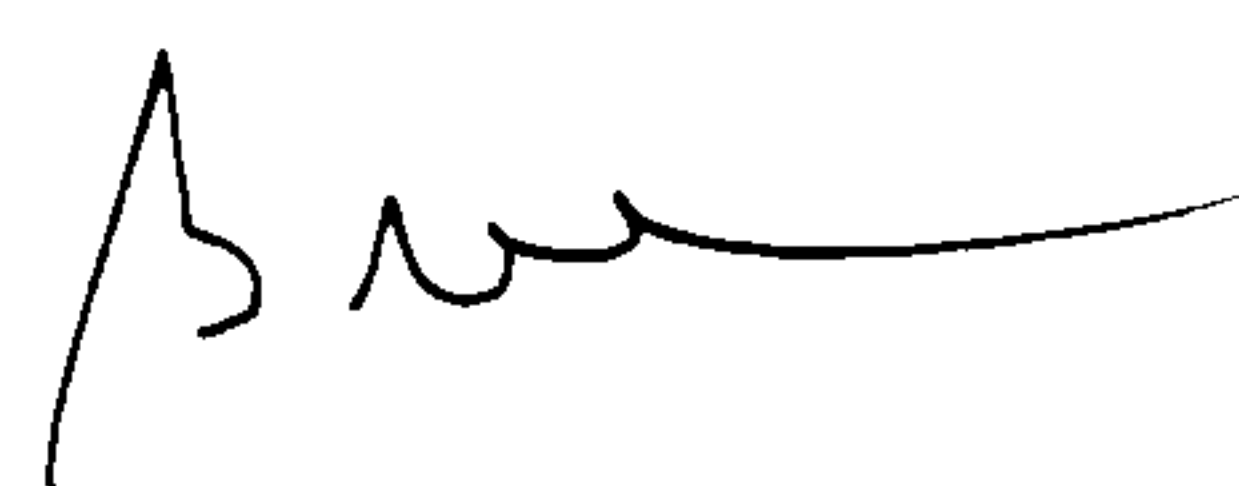
14. Having considered the entire material on record, this Tribunal passes the following order: -

(1) 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, on Thursday, on the 30th March, 2017, at 10 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(2) A meeting of the secured creditors of the Applicant-company shall be convened and held on the 30th March, 2017, at 11 A.M., at J.B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad – 380 015, for the purpose of considering and, if thought fit, approving with or without modification(s) the scheme.

(3) A meeting of the unsecured creditors of the Applicant-company shall be held on the 30th March, 2017, at 12 noon, at J.B. Auditorium, Ahmedabad Management Association, Dr. Vikram Sarabhai Marg, ATIRA, Ahmedabad – 380 015, for the purpose of considering and, if thought fit, approving with or without modification(s) in the agreement embodied in the scheme.

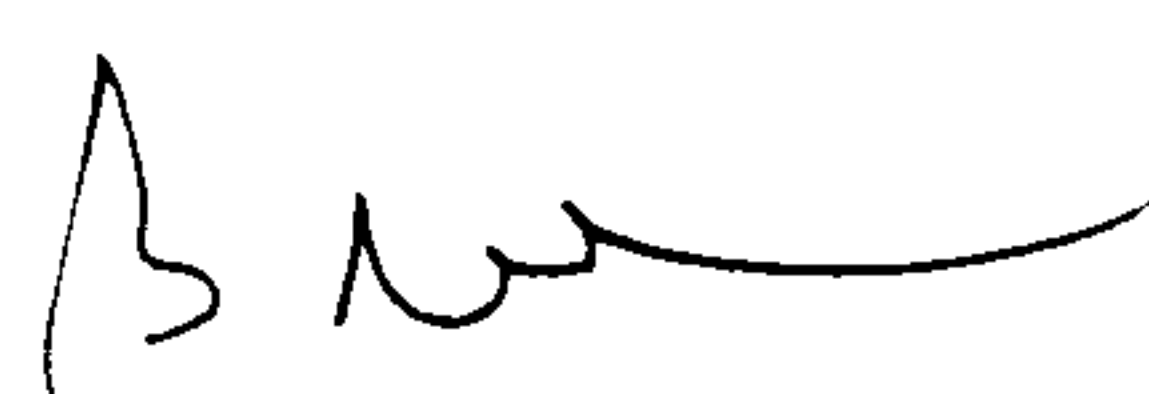
(4) In view of Sections 230(4) and 232(1) of the Companies Act, 2013 read with Rules 5 and 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and Rules 20 and 22 of the Companies (Management and Administration) Rules, 2014, the



Applicant-company is required to provide the facility of postal ballot and e-voting to its shareholders. Accordingly, voting by equity shareholders of the Applicant-company to the scheme shall be carried out through (i) postal ballot and e-voting; and (ii) electronic voting system or ballot or polling paper at the venue of the meeting to be held on 30th March, 2017. In the case of meetings of secured creditors and unsecured creditors, the voting shall be carried out through ballot/polling paper.

(5) At least one month before 30th March, 2017, i.e. the date of aforesaid meetings, an advertisement about convening of the said meetings, indicating the day, date, place and time, as aforesaid, shall be published in Indian Express (All editions in English language) and a Gujarati translation thereof in Sandesh (Ahmedabad edition). The publication shall indicate the time within which copies of the scheme shall be made available to the concerned persons free of charge from the registered office of the company. The publication shall also indicate that the statement required to be furnished pursuant to Section 102 of the Act read with Sections 230 to 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., 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 and Rule 7 of the Companies (CAA) Rules, 2016.

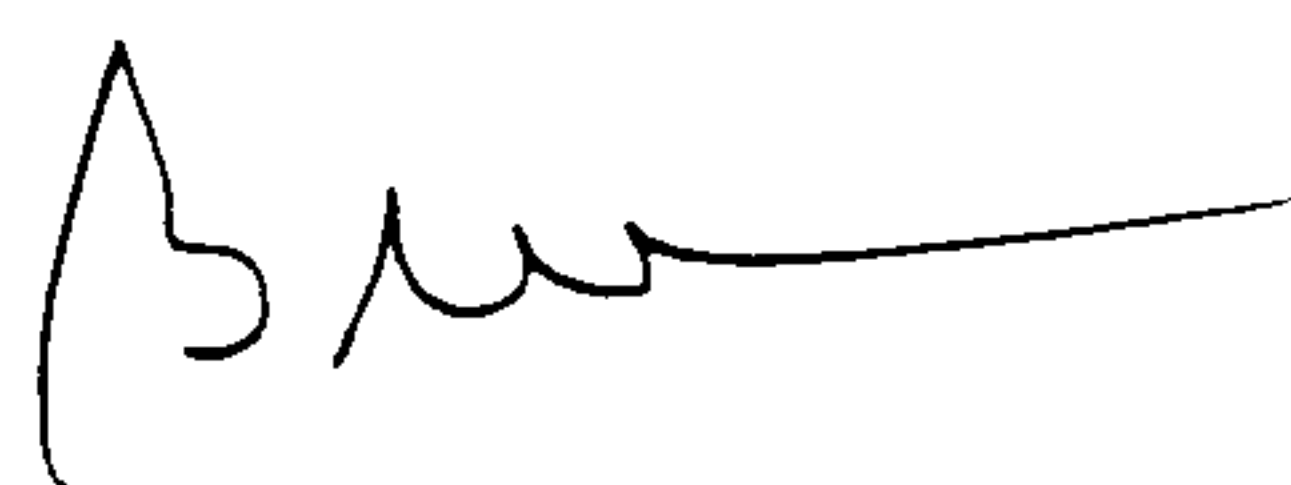
(6) At least one month before 30th March, 2017, i.e. the date of aforesaid meetings of equity shareholders (including public shareholders), a notice in Form No.CAA.2 convening the said meeting indicating the day, date, place and time aforesaid, containing instructions with regard to postal ballot and e-voting (in case of 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 Sections 230 to 232 of the Act and Rule 6 of the



Companies (CAA) Rules, 2016 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 /Airmail 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 Securities and Exchange Board of India [proviso to Section 230(3)]. The notices shall be sent to the equity shareholders of the Applicant-company with reference to the list of persons appearing on the record of the Applicant-company and its register as on 21st February, 2017, being a cut of date as prescribed under Rule 20 of the Companies (Management and Administration) Rules, 2014. The aforesaid cut of date would be the date determining the eligibility to vote by the equity shareholders.

(7) In addition, at least one month before the date of the aforesaid meetings of the secured creditors and unsecured creditors to be held as aforesaid, a notice convening the said meetings, indicating the day, date, place and time, as 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 Sections 230 to 232 and Rule 6 of the Companies (CAA) Rules, 2016 and the prescribed form of proxy shall be sent to each of the secured creditors and the unsecured creditors of the Applicant-company at their respective registered or last known addresses either by Registered Post or Speed Post/Airmail or by Courier. The notice shall be sent to the secured creditors 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 31st January, 2017.

(8) Mr. Humayun Dhanrajgir, an Independent Director of the Applicant-company and, in his absence, Mr. Apurva Diwanji, an Independent Director of the Applicant-company shall be the



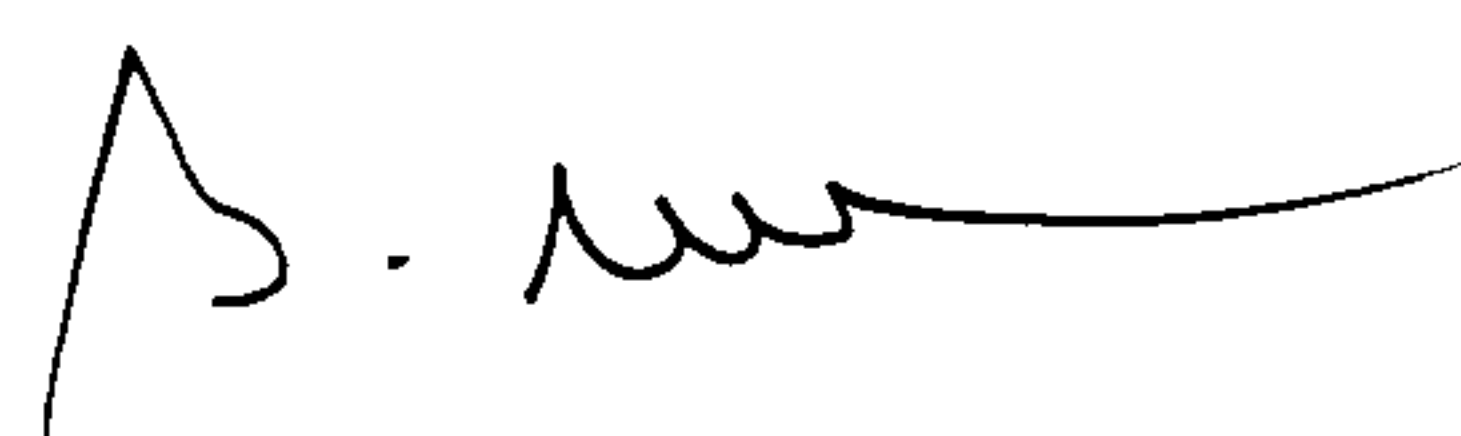
Chairman of the aforesaid meetings to be held on 30th March, 2017 and in respect of any adjournment or adjournments thereof.

(9) Mr. Hitesh D. Buch, a Practising Company Secretary, is appointed as the Scrutinizer for the meeting of the equity shareholders (which includes public shareholders) of the Applicant-company including for conducting the postal ballot and e-voting process and also for the meeting of the secured creditors and unsecured creditors of the Applicant-company.

(10) The Chairman appointed for the aforesaid meetings shall issue the advertisements and send out the notices of the meetings referred to above. The Chairman is free to avail the services of the Applicant-company or any agency for carrying out the aforesaid directions. The Chairman shall have all powers under the Articles of Association of the Applicant-company and also under the Rules in relation to the conduct of meetings, including for deciding any procedural questions that may arise at the meetings or adjournments thereof proposed at the said meetings, amendment(s) to the aforesaid scheme or resolutions, 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) electronic voting system or ballot or polling paper at the venue of the meeting of the equity shareholders and for the secured creditors and the unsecured creditors by polling paper/ballot.

(11) The quorum for the meeting of equity shareholders shall be thirty (30) persons present in person. The quorum for the meeting of the secured creditors shall be 2 (two) persons present in person. The quorum for the meeting of the unsecured creditors shall be five (five) persons present in person.

(12) 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 Zydus Tower, Satellite Cross Roads, Sarkhej-Gandhinagar Highway, Ahmedabad – 380 015, not later than 48 hours before the meetings vide Rule 10 of Companies (CAA) Rules, 2016 read with Section 105 of the Companies Act.

(13) The number and value of equity shares of the equity shareholders or the value of the debts of the secured creditors 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 of the meetings shall determine the number or value, as the case may be, for purposes of the meetings.


(14) The Chairman to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and to report to this Tribunal that the directions regarding issuance of notices and advertisement of the meetings have been duly complied with as per Rule 12 of Companies (CAA) Rules, 2016.

(15) It is further ordered that the Chairman shall, report to this Tribunal on the result of the meeting in Form No.CAA.4, verified by his affidavit, as per Rule 14 of the Companies (CAA) Rules, 2016 in Form No.CAA.4 within seven days after conclusion of meeting.

(16) In compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (CAA) Rules, 2016, the Applicant-company shall send a notice of meeting under sub-section (3) of Section 230 read with Rule 6 of the Companies (CAA) Rules, 2016 in Form No.CAA.3 along with a copy of the scheme of arrangement, the 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, (iii) the Income-tax

authorities, (iv) the Reserve Bank of India, (v) the Securities and Exchange Board of India, (vi) the Competition Commission of India, (vii) BSE Limited, (viii) NSE Limited and (ix) the Official Liquidator 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 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 Companies (CAA) Rules, 2016. The aforesaid authorities, who desire to make any representation under subsection (5) of Section 230, 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.

This Company Application is disposed of accordingly.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
15th day of February, 2017.