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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CA(CAA) No. 13/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 30.03.2017**

Name of the Company: Eco Phil Metals Pvt Ltd.

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

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

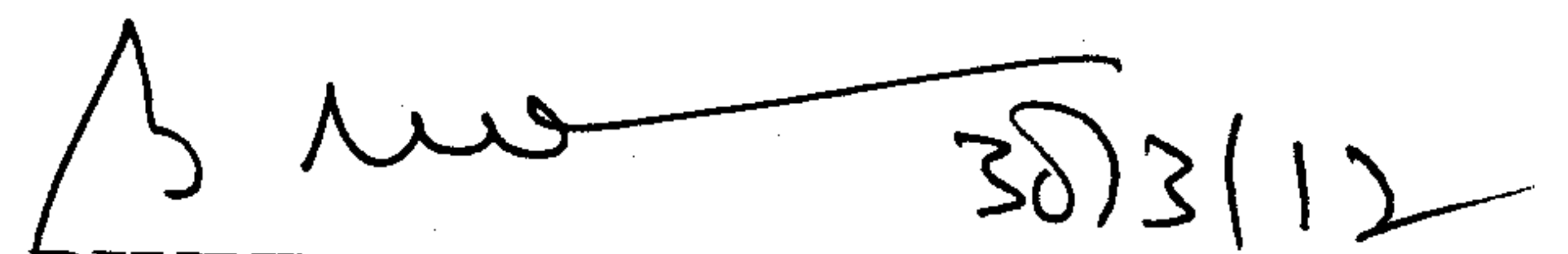
1. Aayog doshi Advocate for SP Majmudar Aayog

2.

ORDER

Learned Advocate Mr. Aayog Doshi i/b Sharvil Majmudar present for Applicant.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 30th day of March, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 30th day of March, 2017

C.A.(CAA) 13/NCLT/AHM/2017

In the matter of: -

Eco Phil Metals Private Limited,
A company incorporated under
the provisions of the Companies
Act, 1956 and having its Registered
Office at 4B-1, Aspen Infrastructure Limited (SEZ),
Pipalia, Waghodia Road,
Vadodara, Gujarat – 391760. Applicant
(Transferor Company)

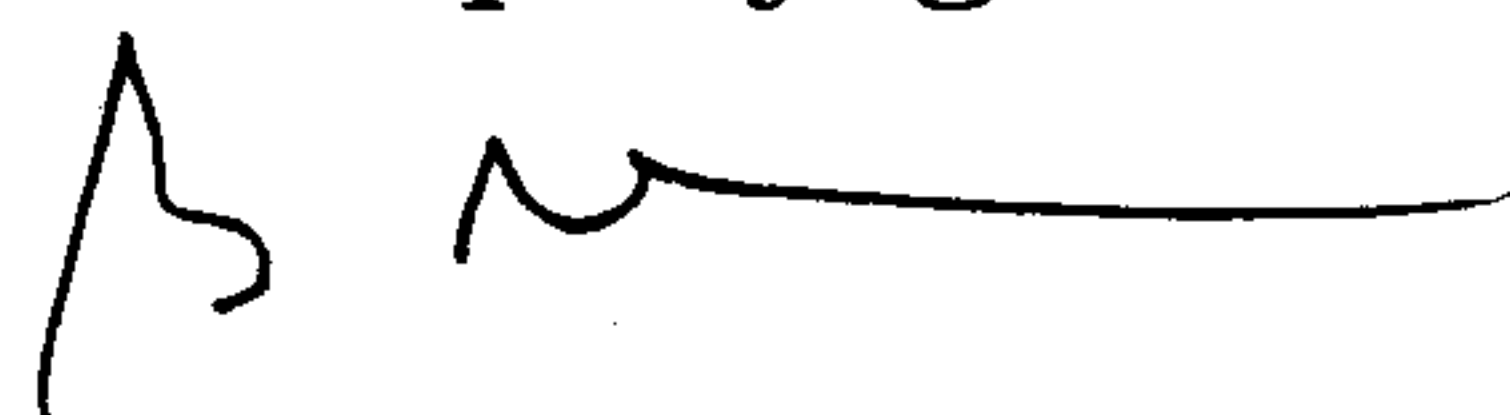
Appearance: -

Mr. Ajay Y. Doshi, Advocate, for Mr. S. P. Majmudar, Advocate,
for the Applicant.

FINAL ORDER

(Date: 30.03.2017)

1. M/s. Eco Phil Metals Private Limited (hereinafter referred to as the “transferor company”) has filed this application under Section 232 of the Companies Act, 2013.
2. The applicant-company is a Private Limited. The applicant-company is a subsidiary of M/s Persang Alloy Industries Private Limited (hereinafter referred to as the “transferee company”).
3. This Company Application is filed by the transferor-company proposing a scheme of amalgamation (“Scheme” for short) of the transferor company with the transferee company. The Board of Directors of the applicant-company passed a resolution on 3rd October, 2016 (Annexure “D”) approving the Scheme (Annexure “A”). Chartered Accountant of the applicant-company gave a certificate



stating that there are only two shareholders of the applicant-company and both of them gave their consent for dispensing with the meeting of equity shareholders of the company and that they have waived their right to receive notice of the General Meeting. It is stated in the petition that the applicant-company has no secured creditors and that there are only seven unsecured creditors aggregating to Rs.3,70,53,001/-. Out of the seven unsecured creditors, six of them valuing at Rs.3,53,49,267/- (aggregating to 85.71 in numbers and 95.40% in value) gave consent in writing for dispensing with the calling of meeting of the creditors for sanctioning of the proposed Scheme. A certificate of Chartered Accountant to that effect is produced at Annexure "H". It is also stated in the application that there are no investigation proceedings under Sections 210 to 229 of the Companies Act, 2013 pending against the applicant-company.

4. In this application, the transferor company is seeking exemption of meeting of equity shareholders for the purpose of considering and, if thought fit, approving, with or without modification(s) the Scheme of Amalgamation of the applicant transferor-company with the transferee company. The applicant company is also prayed for dispensing with the meeting of unsecured creditors.

5. Heard learned Advocate, Mr. Aayog Y. Doshi, for Mr. S.P. Majmudar, Advocate for the applicant-company.

6. In CA(CAA) No.4 of 2017, this Tribunal held that the Tribunal has got discretionary power to dispense with the meeting of equity shareholders in family concerns and closely held companies wherein consent of the shareholders have been obtained. For coming to the aforesaid conclusion, this Tribunal relied on following decisions of various Honourable High Courts: -

(1) ***Mazda Theatres Pvt. Ltd. and Anr. Vs. New Bank of India Ltd. and Ors.*** reported in MANU/DE/0104/1974;

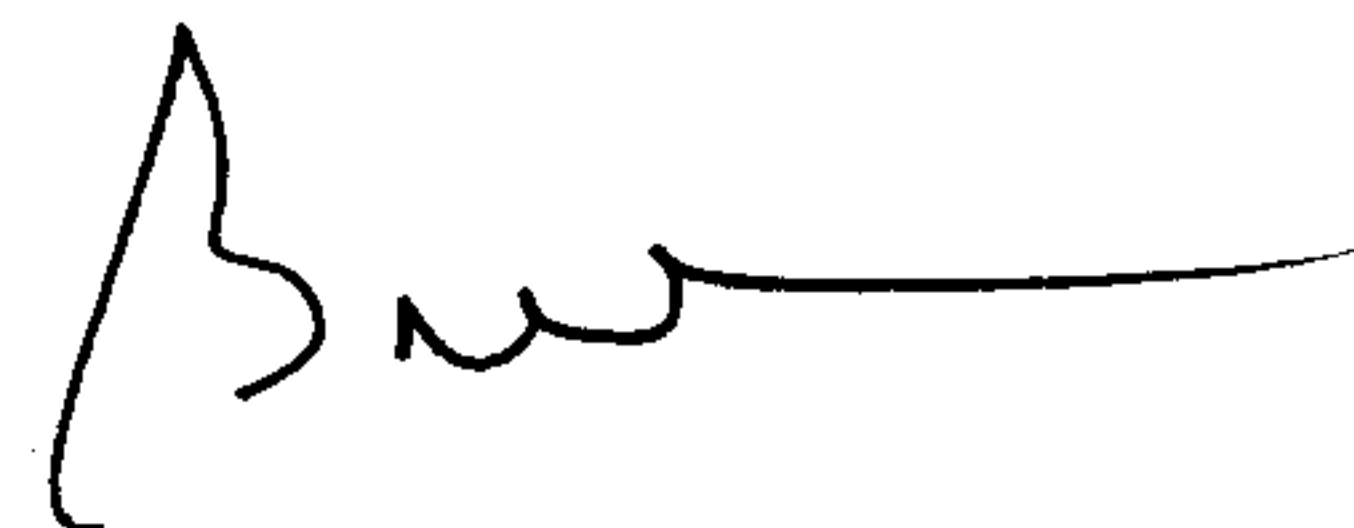


- (2) **Mysore Cements Ltd., in Re**, reported in [2009]149 Comp Cas 50 (Karn);
- (3) **Ansal Properties & Industries Ltd. and Anr. Vs. Company**, reported in MANU/DE/0118/1976; [1978]48 Comp Cas 184 (Delhi);
- (4) **Scheme of Amalgamation of GE Capital Transportation Financial Services Limited vs. GE Capital Services India**, reported in 2009 SCC online Del 535. (2009) 149 Comp Cas 52;
- (5) **In Re: Sharat Hardware Industries P. Ltd.** reported in MANU/DE/0262/1976; [1978] E Com Cas 23 (Delhi)

7. In the case on hand, there are only two equity shareholders and they have given consent for the Scheme. In this view of the matter, this Tribunal is of the view that meeting of equity shareholders of the applicant transferor-company deserves to be dispensed with.

8. Coming to the creditors, it is stated in the petition that the applicant-company has no secured creditors and that there are only seven unsecured creditors aggregating to Rs.3,70,53,001/-. Out of the seven unsecured creditors, six of them valuing at Rs.3,53,49,267/- (aggregating to 85.71 in numbers and 95.40% in value) gave consent in writing for dispensing with the calling of meeting of the creditors for sanctioning of the proposed Scheme. This averment made in the application is certified by the certificate of the Chartered Accountant, which is produced at Annexure "H". This Tribunal, therefore, is inclined to dispense with meeting of creditors of the applicant-company by invoking sub-section (9) of Section 230 of the Companies Act, 2013. There is no need to hold meeting of secured creditors since there are no secured creditors.

9. In the result, this application stands disposed of as allowed with the following directions: -



(1) Meeting of equity shareholders of the applicant-company for the purpose of considering the Scheme of Amalgamation of the applicant transferor-company with the transferee-company is dispensed with.

(2) Meeting of unsecured creditors of the applicant-company for the purpose of considering the Scheme of Amalgamation of the applicant transferor-company with the transferee-company is also dispensed with.

(3) The applicant-company is directed to send notice in form CAA3 along with a copy of the Scheme of Amalgamation and Explanatory Statement to the statutory authorities, namely, (a) the Central Government through the Regional Director, North Western Region, Gujarat State; (b) the Registrar of Companies, Gujarat; (c) the concerned Income Tax authorities; and (d) the Official Liquidator, asking them to make representation(s), if any, in case they desire to make, within a period of 30 days from the date of receipt of notice, to this Tribunal and, in case no representation is received by this Tribunal within the stipulated period of 30 days, it shall be presumed that the authorities have no representation to make on the proposed Scheme of Amalgamation.

(4) The applicant-company shall file petition for sanction of the Scheme of Amalgamation within three weeks from the date of this order.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
30th day of March 2017.