

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 28/NCLT/AHM/2017 (New)
C.P. No. 499/2016 with C.A. No. 477/2016 (Old)**

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 18.04.2017**

Name of the Company: Texni Plex India Pvt Ltd.

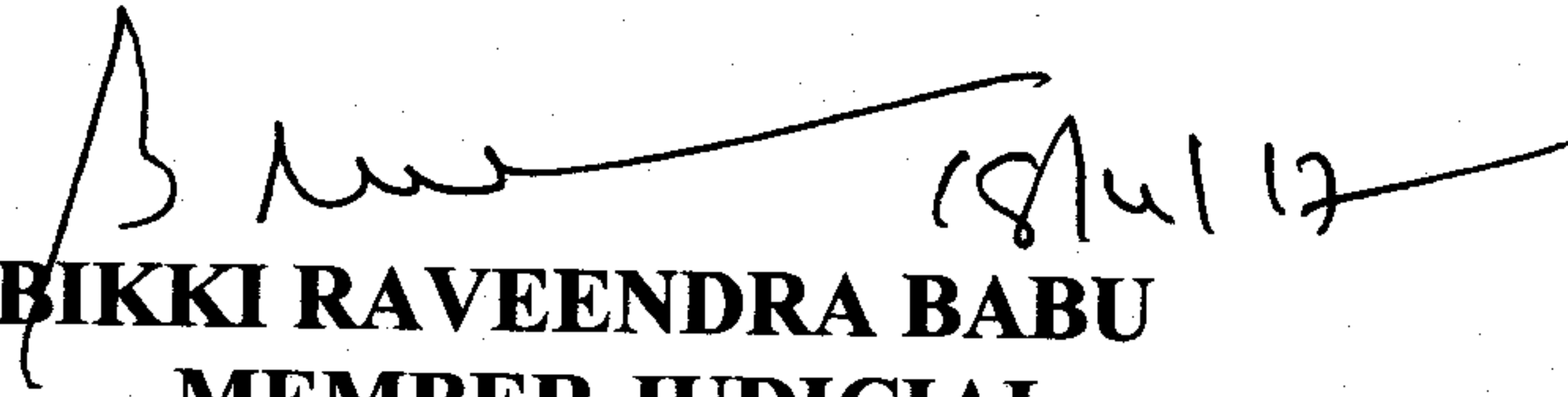
Section of the Companies Act: Sections 391-394 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SWATI SOPARKAR	ADVOCATE	PETITIONER	Swati Soparkar
2.				

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Common Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 18th day of April, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of April, 2017

T.P. No.27/NCLT/AHM/2017

With

T.P. No.28/NCLT/AHM/2017

In the matter of: -

1. Ghiya Extrusions Private Limited,
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at
18/A & B, Kamaldeep Industrial Estate,
Opp. Arvind Polycot,
Khatraj Industrial Area,
Taluka Kalol, Kalol Gandhinagar-382 721
Gujarat. ... Petitioner of T.P. No. 27/2017
(Transferor Company)
And
2. Tekni Plex Private Limited,
A company incorporated under the
Provisions of the Companies Act, 1956
and having its registered office at
18/A, Kamaldeep Industrial Estate,
Opp. Arvind Polycot,
Khatraj Industrial Area,
Taluka Kalol, Kalol Gandhinagar-382 721
Gujarat. ... Petitioner of T.P. No. 28/2017
(Transferee Company)

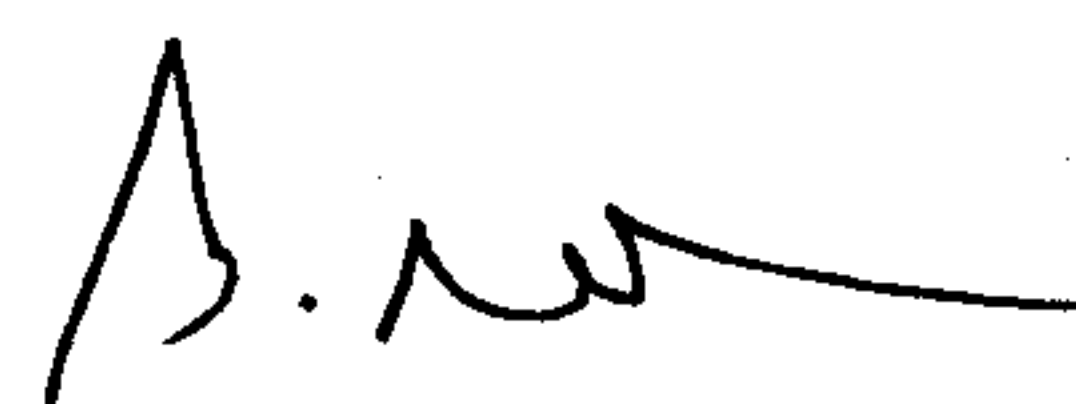
Appearance: -

1. Mrs. Swati Sorparkar, Advocate for the petitioner-companies.
2. Mr. Pathik M. Acharya, Advocate, for the Official Liquidator,
Gujarat High Court, in both the matters.

COMMON FINAL ORDER

(Date: 18.04.2017)

1. These petitions under Sections 230 to 232 of the Companies Act, 2013 have been filed seeking sanction of a proposed scheme of amalgamation of Ghiya Extrusions Private Limited

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(transferor-company) with Tekni Plex Private Limited (transferee-company) ["Scheme" for short].

2. The petitioner of T. P. No.27 of 2017, i.e. Ghiya Extrusions Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.476 of 2016, seeking dispensation of meetings of the equity shareholders and unsecured creditors of the said company. The Honourable High Court, vide its order dated 7th November, 2016, dispensed with the convening and holding of the meeting of equity shareholders of the petitioner-company in view of the consent letters given by the equity shareholders. In that order, the Honourable High Court observed that there are no secured creditors of the petitioner-company. The Honourable High Court also dispensed with the meeting of unsecured creditors of the petitioner transferor-company considering the contents of paragraph 11 of the affidavit in support of the Judges' Summons and in view of the fact that the Scheme envisages that the transferee-company shall undertake all the liabilities towards the unsecured creditors of the transferor-company in its normal course of business, without any sacrifice anticipated from the creditors of the transferor-company.
3. The petitioner of T. P. No.28 of 2017, i.e. Tekni Plex Private Limited had filed an application in the Honourable High Court of Gujarat, being Company Application No.475 of 2016, seeking dispensation of meetings of the equity shareholders and unsecured creditors of the said company. The Honourable High Court, vide its order dated 7th November, 2016, dispensed with the convening and holding of the meeting of equity shareholders of the petitioner transferee-company in view of the consent letters given by the equity shareholders. In that order, the Honourable High Court observed that there are no secured creditors of the petitioner-company. The Honourable High Court also dispensed with the meeting of unsecured creditors

of the petitioner transferee-company considering the contents of paragraph 11 of the affidavit in support of the Judges' Summons and also considering a certificate from Chartered Accountant confirming that in the post-Scheme scenario, the net worth of the petitioner transferee-company would be approximately Rs. 2151.47 lacs.

4. The petitioners, thereafter, filed Company Petitions Nos. 498 and 499 of 2016 in the High Court of Gujarat seeking sanction of the Scheme. The Honourable High Court, by its orders, dated 29th November, 2016, admitted the aforesaid Company Petitions and directed the issuance of notice to the Regional Director in both the aforesaid Company Petitions and the Official Liquidator in Company Petitions Nos.498 of 2016. The High Court also directed publication of notice of hearing of the petitions in the English daily newspaper "Indian Express" and the Gujarati daily newspaper "Sandesh", both Ahmedabad editions. The High Court also dispensed with publication of notice in the Gujarat Government Gazette.
5. Pursuant to the order dated 29th November, 2016 passed by the Honourable High Court, the petitioner-companies published the notice of hearing of the petitions in the English daily newspaper, "Indian Express", Ahmedabad edition on 8th December, 2016 and in Gujarati daily newspaper, "Sandesh", Ahmedabad edition on 7th December, 2016. The notices in respect of hearing of both the Company Petitions were served upon the Regional Director and the notice of hearing in respect of Company Petition No.498 of 2016 was served upon the Official Liquidator on 5th December, 2016 and affidavits to that effect were also filed on behalf of the petitioner-companies.
6. Subsequently, the Honourable High Court, in view of Rule 3 of The Companies (Transfer of Pending Proceedings) Rules, 2016, vide orders dated 3rd December, 2016, transferred the aforesaid

Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos.27 to 28 of 2017. Thereafter, this Tribunal vide orders dated 23rd February, 2017, directed the petitioner-companies to publish notice in the newspapers in which already publication had been made informing the date of hearing. The petitioner-companies were also directed to give notice to the following statutory authorities: -

- a. The Central Government through the Regional Director, Gujarat.
- b. The Reserve Bank of India.
- c. The Income Tax Authority.
- d. The Registrar of Companies.

The petitioner-company in T.P. No.27 of 2017 was also directed to serve notice on the Official Liquidator. Accordingly, the petitioner-companies published a common notice of hearing of T.P. Nos.27 and 28 of 2017 in English daily "Indian Express" and Gujarati daily "Sandesh", both Ahmedabad edition, on 10th March, 2017. Notices of hearing of the petitions were also served upon statutory authorities, namely, (i) the Central Government through the Regional Director, (ii) the Reserve Bank of India, (iii) the Income Tax Authority, (iv) the Registrar of Companies, Gujarat, Ahmedabad, and (v) the Official Liquidator and an affidavits of service dated 8th March, 2017 have been filed by the Authorised Signatory of the petitioner-companies.

7. In response to the notice to the Regional Director, Ministry of Corporate Affairs, the Regional Director filed a common representation dated 7th March, 2017. The Official Liquidator filed a representation dated 22nd March, 2017. However, no representation has been received either from the Income Tax Authorities or from the Reserve Bank of India. Similarly, pursuant to the publication of notice of hearing of the petitions

in newspapers, no objection to the scheme has been received from the public at large. Likewise, pursuant to the notices issued to shareholders and unsecured creditors of the petitioner-companies, no shareholder or unsecured creditor has raised any objection to the proposed scheme.

8. Heard learned Advocate, Mrs. Swati Soparkar, for the petitioner-companies and learned Advocate, Mr. Pratik Acharya, for the Official Liquidator.
9. In paragraph 2(e) of the common representation filed by the Regional Director, it is observed that the office of the Regional Director is not aware as to whether both the petitioner-companies have complied with the provisions of FEMA and RBI guidelines or not as there are foreign shareholders in both the companies. The Regional Director, therefore, requested the Tribunal to direct the petitioner transferor-company to ensure about the compliance of FEMA and RBI guidelines. In the common additional affidavit filed by the Authorised Signatory of the petitioner-companies, in paragraph 7(iii), it is stated that no prior approval is required to be obtained for the proposed Scheme of amalgamation under the applicable provisions of FEMA and RBI guidelines. It is further stated that the petitioner-companies shall comply with the applicable provisions of FEMA and RBI guidelines at the time of actual issuance and allotment of shares to the NRI/foreign companies pursuant to the scheme. It is also stated in the reply affidavit that, it has already been envisaged vide clause 5.6 of the Scheme that the transferee-company shall comply with the applicable provisions of FEMA and Reserve Bank of India Rules. The petitioner-companies have also given an undertaking to do the needful for such compliance upon the Scheme being effective. In light of the aforesaid, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(e) of the representation stands satisfied.

10. The Regional Director, in paragraph 2(f) of the representation stated that the petitioner transferor-company gave bank-guarantee to the tune of Rs.2,00,000/- as on 31.03.2016 and, therefore, this Tribunal may direct the petitioner-company to place on record all the relevant facts in the matter and to satisfy that these contingent liabilities, in case they get invoked, will not affect the financial position of the company adversely, so as to impact the liquidity of the company and its continuance/going concern concept. In the common affidavit filed by the petitioner-companies, in paragraph 7(iv) it is stated that as all the liabilities of the transferor-company are envisaged to be fulfilled by the transferee-company, upon the Scheme being effective, the said contingent liability shall be duly honoured as and when the same is crystalized. It is also stated in the reply affidavit that considering the financial position of both the petitioner-companies, fulfilling such contingent liabilities is not likely to have any adverse impact on the liquidity of the company and its business activities on going concern concept. In light of the aforesaid, this Tribunal is of the view that the observation made by the Regional Director in paragraph 2(f) of the representation stands satisfied.

11. The Regional Director, in paragraph 2(g) of the common representation, stated that pursuant to the circular of the Ministry of Corporate Affairs bearing No.2 / 1/ 2014 dated 15.01.2014, he invited specific comments from the Income Tax Department giving 15 days' time to the Income Tax Department to state their objections, if any, to the proposed scheme. It is stated by the Regional Director in the said paragraph that no reply has been received by the Directorate from the Income Tax Department. The Regional Director, therefore, requested this Tribunal to direct the petitioner-companies to undertake compliance of provisions of the Income Tax Act and the Rules. In the reply, it is stated that the Income Tax Department has

also not responded to the service of notice by the petitioner-companies and that the petitioner-companies shall comply with the applicable provisions of the Income Tax Act and the Rules framed thereunder. In light of the above reply, this Tribunal is of the view that the observations of the Regional Director at paragraph 2(g) of the common representation stand satisfied.

12. The Regional Director also stated that, as per the report of the Registrar of Companies, Gujarat, dated 27.12.2016, there are no complaints against the petitioner-companies and no complaint/representation against the Scheme of arrangement was received by the office of the Registrar of Companies. It is also stated by the Regional Director that the proposed Scheme is not prejudicial to the interest of shareholders of the petitioner-companies and the public at large.

13. In response to the notice to the Official Liquidator in Company Petition No.498 of 2016 (T.P. No. 27 of 2017), the Official Liquidator filed his representation dated 22nd March, 2017. On perusal of the said report, the Official Liquidator, at paragraph 18, has submitted that the affairs of the transferor-companies have not been conducted in a manner prejudicial to the interest of their members or to public interest. With regard to the observations made by the Official Liquidator at paragraph 19 of the representation, in paragraph 6 of the common additional affidavit dated 27th March, 2017, it is stated that the petitioner-companies undertake to abide by the provisions of Section 239 of the Companies Act, 2013 and also undertake to preserve the records, papers and books of accounts of the transferor-company and shall not dispose of the same without prior permission. In respect of the observations made at paragraph 20 of the representation, it is stated in paragraph 8 of the common additional affidavit that the accounting treatment proposed in the scheme is in conformity with the accounting standards prescribed under the provisions of

Section 133 of the Companies Act, 2013. In this regard, the petitioner-companies, along with the common affidavit, produced a certificate from Statutory Auditor certifying that the proposed accounting treatment contained in clause 6 of the proposed scheme is in compliance with Accounting Standard – 14 “Accounting for Amalgamations” notified under Section 133 of the Act read with Rule 7 of the Companies (Accounts) Rules, 2014 (as amended) and other Generally Accepted Accounting Principles. In paragraph 21 of the representation, the Official Liquidator 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 shall not be absolved from any of its statutory liability, in any manner. It is observed that the petitioner transferee-company shall comply with the provisions of all applicable laws and shall not be absolved from any of its statutory liability on sanctioning of the Scheme. The Official Liquidator requested the Tribunal to direct the petitioner-company to pay cost of Rs.10,000/- to the office of the Official Liquidator. No objection was received from the public at large pursuant to the publication of notice of hearing in newspapers.


14. 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, 1956 are satisfied. The Scheme appears to be genuine and *bona fide* and in the interest of the shareholders and creditors.

15. 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, Ghiya Extrusions Private Limited and Tekni Plex Private Limited, and their equity shareholders, creditors and all concerned under the scheme. It

is also declared that the petitioner-company, namely, Ghiya Extrusions Private Limited, shall stand dissolved without winding up.

16. The fees of the Official Liquidator are quantified at Rs.10,000/- in respect of T.P. No. 27 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

17. Filing and issuance of drawn up orders are 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.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Pronounced by me in open court on this
18th day of April, 2017.

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