

13

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 32/NCLT/AHM/2017 (New)
Gujarat High Court C.P. No. 529/2016 with C.A. No. 484/2016 (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 05.05.2017**

Name of the Company: Ashapura Proteins Pvt. Ltd.


Section of the Companies Act: Section 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.	NAVIN PAUWA	ADV.	PETITIONER	Natasha
2.				

ORDER

Learned Advocate Ms. Natasha Sutaria present for Petitioner.

Common Order pronounced in open Court. Vide Separate Sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 5th day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 5th day of May, 2017

T.P. No.32/NCLT/AHM/2017

With

T.P. No.31/NCLT/AHM/2017

In the matter of:

1. Ashapura Protins Private Limited,
A company registered under
the provisions of the Companies Act, 1956,
having its registered office at
Survey No 325, Plot No 10,
Near Garibshapir,
Bhavnagar- Rajkot Road,
Sihor, Bhavnagar – 364240, Gujarat

...Petitioner of T.P. No.32/2017
(Transferor Company)

AND

2. Sarvottam Atta Private Limited
A company registered under
the provisions of the Companies Act, 1956,
having its registered office at
325/10, Near Garibshapir,
Bhavnagar-Rajkot Road,
Sihor, Bhavnagar -364240, Gujarat.

...Petitioner of T.P. No. 31/2017
(Transferee Company)

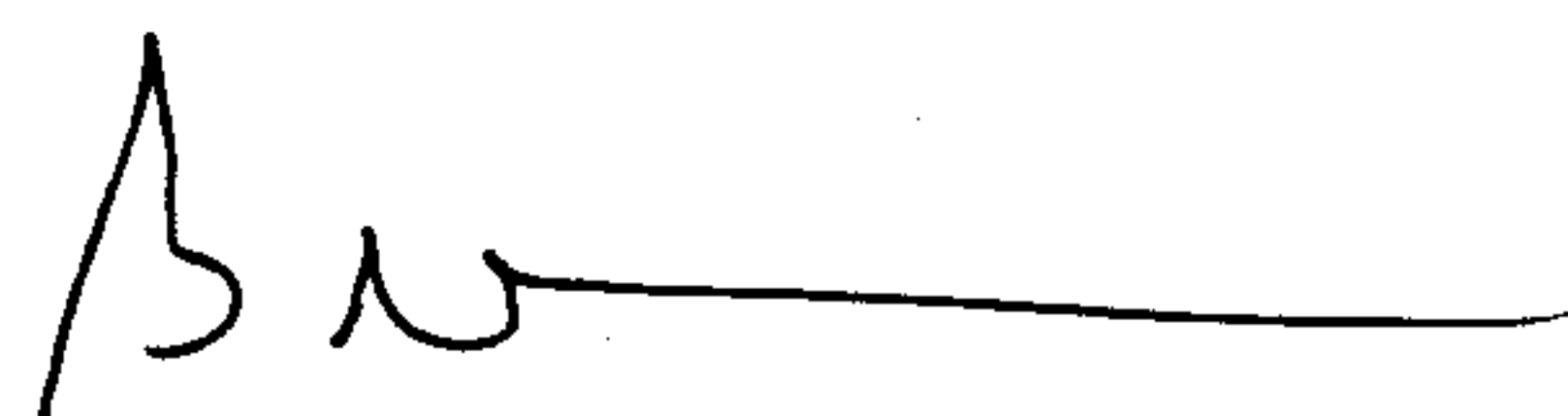
Appearance:-

1. Mr. Navin Pahwa, Advocate, with Ms. Natasha Sutaria, Advocate, for
M/s Thakkar & Pahwa, Advocates for the petitioner-companies.
2. Mr. Pritesh L. Parikh, Advocate, for the Official Liquidator,
Gujarat High Court, in both the matters.

COMMON FINAL ORDER

(Date :05.05.2017)

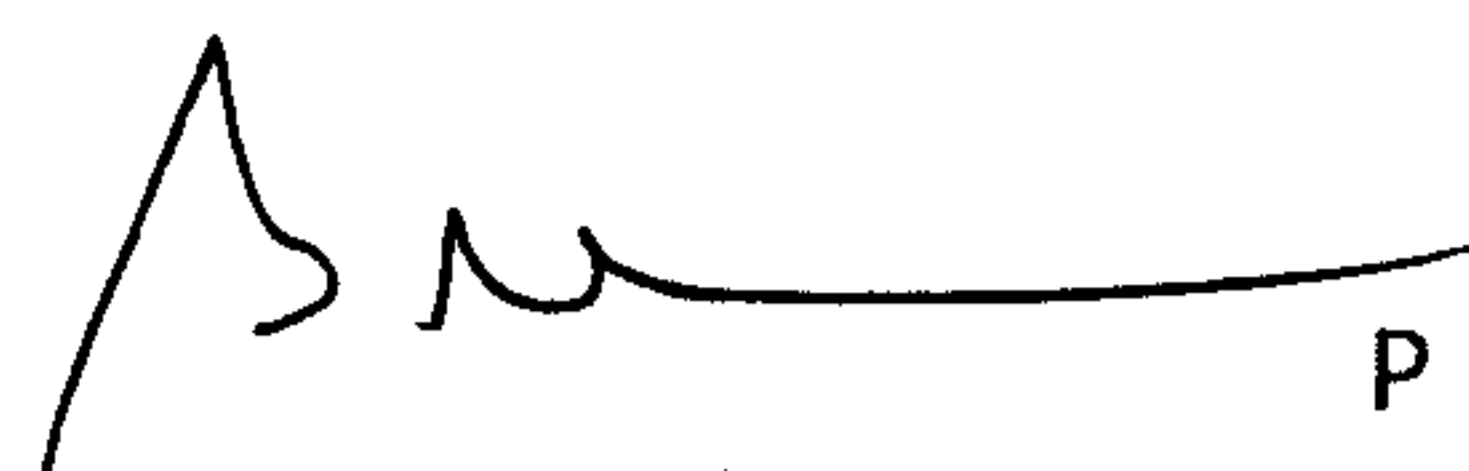
1. These petitions under Sections 230-232 of the Companies Act, 2013 have been filed seeking sanction of a proposed Scheme of Amalgamation of Ashapura Protins Private Limited (Transferor Company) with Sarvottam Atta Private Limited (Transferee Company) ("Scheme" for short).



2. The petitioner of T.P. No. 32 of 2017, i.e. Ashapura Protins Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.484 of 2016, seeking dispensation of the meeting of Equity Shareholders of the said Company. The Honourable High Court, vide order dated 16th November 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. It was reported to the Honourable High Court that the petitioner company did not have any creditors.

3. The petitioner of T.P. No. 31 of 2017, i.e. Sarvottam Atta Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.483 of 2016, seeking dispensation of the meeting of Equity Shareholders of the said Company. The Honourable High Court, vide order dated 16th 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 all the equity shareholders of the Company. In that order, the Honourable High Court observed that being transferee company, the meeting of the creditors was not required to be held.

4. The petitioners, thereafter, filed Company Petitions No. 529 and 528 of 2016 in the Honourable High Court of Gujarat seeking sanction of the Scheme. The Honourable High Court, by its orders dated 14th December 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 Petition No. 529 of 2016. The High Court also directed publication of notice of hearing of the petitions in the English Daily Newspaper "Business Standard" and Gujarati Daily Newspaper "Saurashtra Samachar" having circulation in Bhavnagar. The High



Court also dispensed with publication of the notice in the Government Gazette.

5. Pursuant to the order dated 14th December' 2016 passed by the Honourable High Court, the petitioner- companies published the notice of hearing of the petitions in the English Daily Newspaper "Business Standard" and Gujarati Daily Newspaper "Saurashtra Samachar", both having circulation in Bhavnagar on 28th 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. 529 of 2016 was served upon the Official Liquidator on 27th 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 February 2017, transferred the aforesaid Company Petitions to this Tribunal and they came to be renumbered as T.P. Nos. 32 and 31 of 2017. Thereafter, this Tribunal vide orders dated 6th March 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 Income Tax Authority;
- c. The Registrar of Companies, Gujarat;

The petitioner-company in T.P. No. 32 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. 32 and 31 of 2017 in English daily "Business Standard" and Gujarati Daily "Saurashtra Samachar", both Bhavnagar editions on 25th 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 Income Tax Authority, (iii) the Registrar of Companies, Gujarat, Ahmedabad, and (iv) the Official Liquidator and an affidavits of service dated 15th April 2017 have been filed by the authorized signatories 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 30th March 2017. The Official Liquidator filed a representation dated 10th April 2017. However, no representation has been received from the Income Tax Authorities. 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 equity shareholders in case of petitioner transferor-company and equity shareholders and creditors in case of petitioner transferee-company, no shareholder/secured 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 common reply affidavit dated 11th April 2017. The petitioner transferor-company has filed its reply affidavit dated 15th April 2017 to the representation of the Official Liquidator.

9. Heard learned Advocate, Mr. Navin Pahwa, with learned Advocate, Ms. Natasha Sutaria, for M/s. Thakkar & Pahwa, Advocates, for the petitioner-companies and learned Advocate, Mr. Pritesh Parikh, for the Official Liquidator.

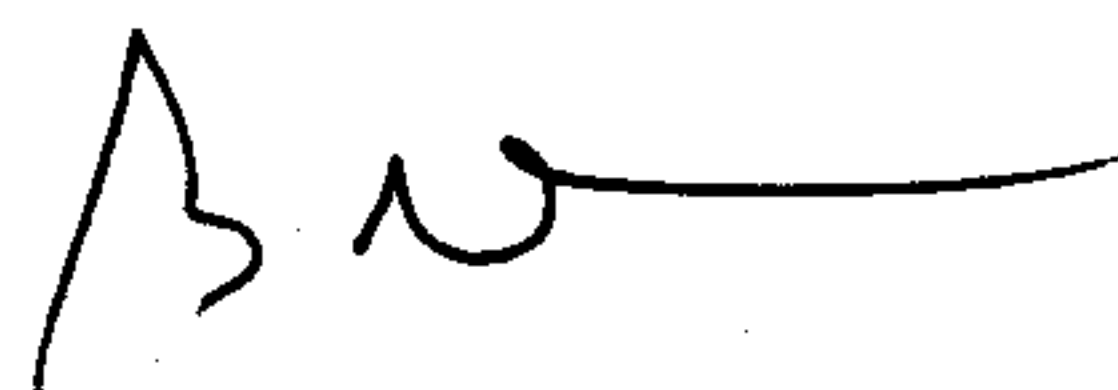
10. In paragraph 2(e) of the common representation filed by the Regional Director, the Regional Director has stated, that pursuant to

the Circular of the Ministry of Corporate Affairs bearing no. 2/1/2014 dated 15.1.2014, 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 in response to the same, the income tax department vide letter dated 21st March 2017 informed the Directorate giving status of demand and pending proceedings in respect of the petitioner transferee-company. A perusal of the report suggests that there are no outstanding demands of income tax for the assessment years 2013-14, 2014-15 and 2015-16. It is further stated that so far as petitioner transferor-company is concerned, the Income Tax Authorities have not given any comments/ report. The Regional Director has requested the Tribunal to direct the petitioner-companies to undertake compliance of provisions of Income Tax Act and the Rules. In the common reply dated 11th April 2017 filed on behalf of the petitioners, it is stated that the petitioner-companies would undertake compliance of Income Tax Act and the Rules. 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.

11. The Regional Director also stated that, as per the report of the Registrar of Companies dated 7th February 2017, there are no complaints against the petitioner-companies and no complaint/ representation against the Scheme of Arrangement of the petitioner-companies is 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 the shareholders of the petitioner-companies and the public at large.

12. In response to the notice to the Official Liquidator in Company Petition No. 529 of 2016 (T.P. No.32 of 2017), the Official Liquidator filed his representation dated 10th April 2017. On perusal of the said

report, the Official Liquidator, at paragraph 20, has submitted that the affairs of the Transferor Company have not been conducted in the manner prejudicial to the interest of its members or to public interest. With regard to the observations made by the Official Liquidator at paragraph 21 of the representation, in paragraph 3 of the affidavit dated 15th April 2017, it is stated that the petitioner transferor-company undertakes to abide by the provisions of Section 239 of the Companies Act, 2013 and also to 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 observation made at paragraph 22 of the representation, it is stated in paragraph 4 of the 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 separate affidavits, produced certificates from auditors certifying that the proposed accounting treatment contained in the Scheme is in compliance with the applicable Accounting Standards notified by the Central Government under the Companies Act, 2013 read with General Circular 8/2014 dated 4th April, 2014, issued by the Ministry of Corporate Affairs, in respect of Section 133 of the Companies Act, 2013. In paragraph 23 of the representation, 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 para 5 of the affidavit, the petitioner transferor-company has stated that the petitioner-company shall ensure statutory compliance of all the applicable law and it is further stated that it is also understood that upon sanction of the Scheme, the petitioner transferor-company shall not be absolved from any of its statutory liability, if any, in any manner. 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. The Official Liquidator requested the Tribunal to direct



the petitioner transferor-company to pay cost of Rs. 10,000/- to the office of Official Liquidator. No objection has been received from the public at large pursuant to publication of notice of hearing in newspapers.

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, Ashapura Protins Private Limited and Sarvottam Atta Private Limited, their equity shareholders, creditors and all concerned under the Scheme. It is also declared that the petitioner-company namely Ashapura Protins Private Limited, shall stand dissolved without winding up.

15. The fees of the Official Liquidator is quantified at Rs. 10,000/- in respect of T.P. No. 32 of 2017. The said fees to the Official Liquidator shall be paid by the Transferee Company.

16. 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 5th day of May, 2017.

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