

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**CP(CAA) No. 11/NCLT/AHM/2017
With Gujarat High Court CA no. 413/2016**

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 01.05.2017**

Name of the Company: Heavy Metal and Tubes Ltd.

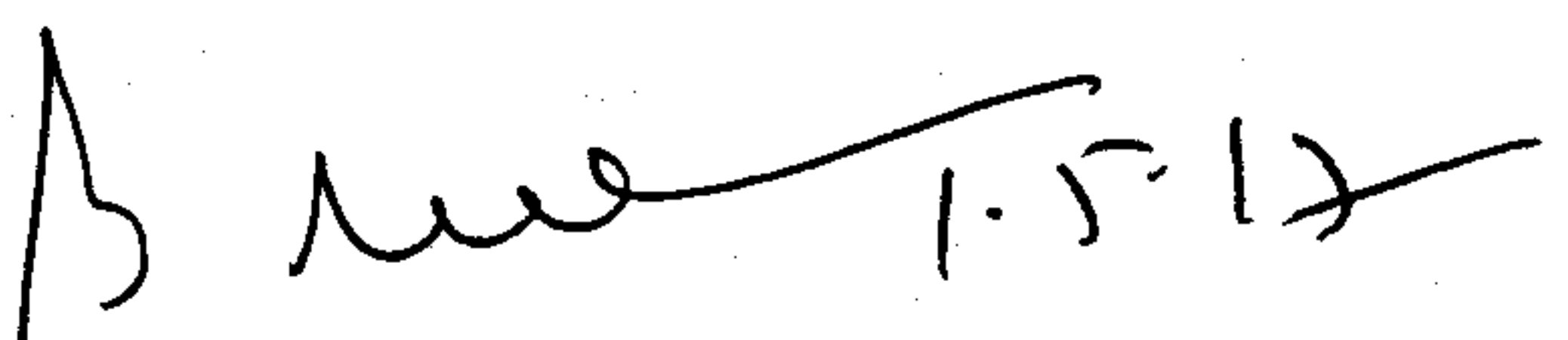
Section of the Companies Act: Section 230-232 of the Companies Act, 2013

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

ORDER

Learned Advocate Mrs. Swati Soparkar present for Petitioner.

Common final order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 1st day of May, 2017.

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 1st day of May, 2017

C.P.(CAA) No11/NCLT/AHM/2017

With

C.P.(CAA) No.12/NCLT/AHM/2017

In the matter of: -

1. Heavy Metal and Tubes Limited,
A company incorporated under
the provisions of the Companies Act,
1956 and having its registered
Office at 201, Ashwarath Complex,
Ashram Road, Usmanpura,
Ahmedabad – 380013. ... Petitioner-Transferor Company
2. HM Financial Services Private Limited,
A company incorporated under
the provisions of the Companies Act,
1956 and having its registered
Office at Vijay Vihar Society,
Vijay Cross Road
Ahmedabad – 380009. ... Petitioner-Transferee Company

Appearance: -

1. Mrs. Swati Soparkar, Advocate, for the petitioner-companies.
Advocates, for the Petitioner-companies.
2. Mr. Pathik Acharya, Advocate, for the Official Liquidator,
Gujarat High Court.

COMMON FINAL ORDER

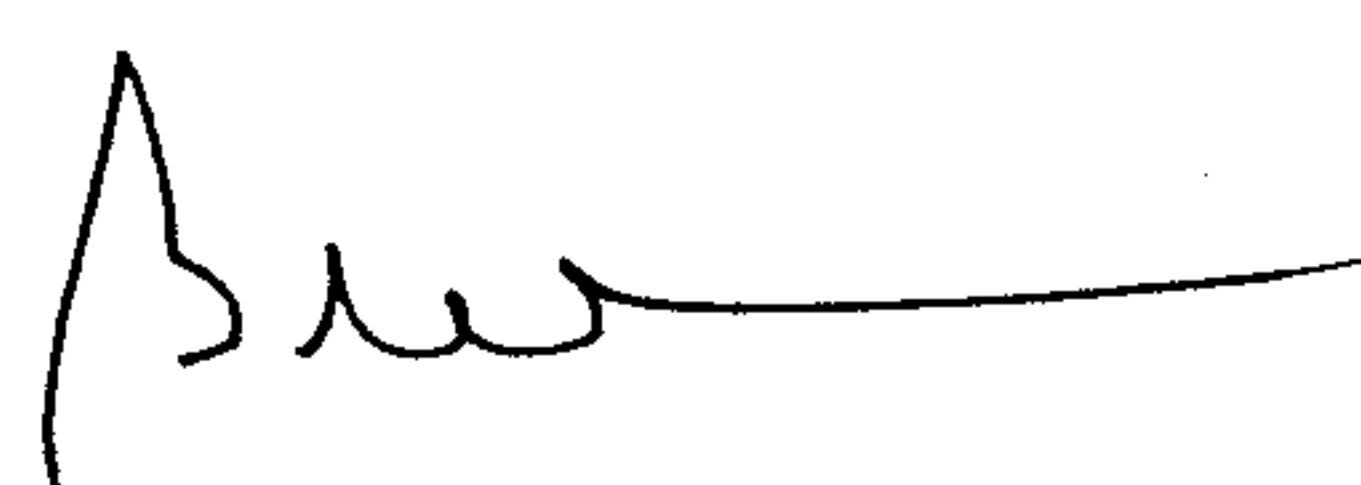
(Date:01.05.2017)

1. These petitions under Sections 230 to 232 of the Companies Act, 2013 have been filed seeking sanction of proposed scheme of Arrangement in the nature of vesting of the specified undertaking of Heavy Metal and Tubes Limited (transferor company) to HM Financial Services Private Limited (transferee company) ["Scheme" for short].

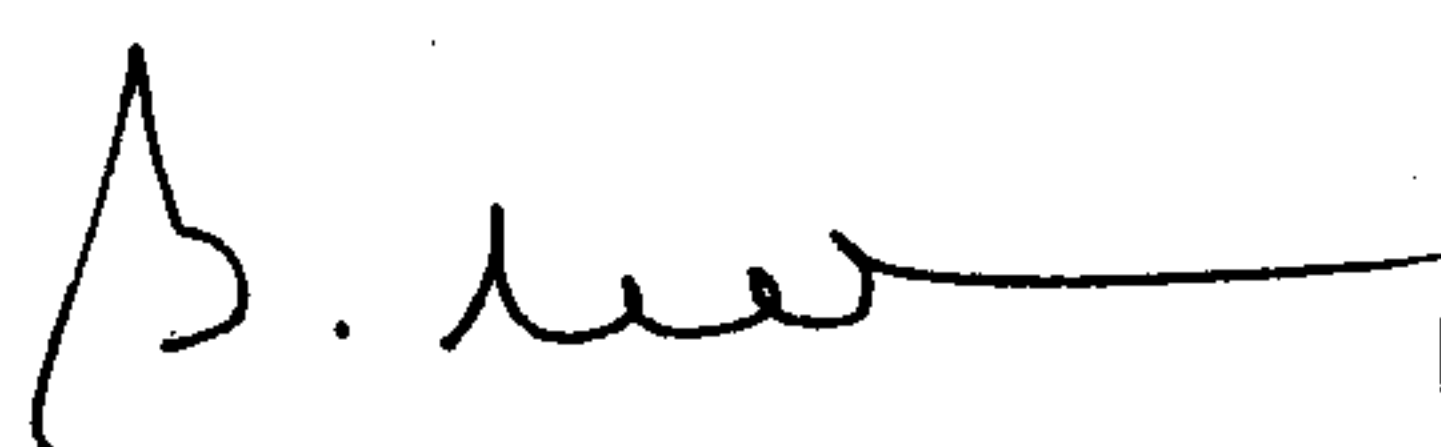
 Page 1 | 7

2. The petitioner of C.P.(CAA) No11 of 2017, i.e. Heavy Metal and Tubes Limited, had filed an application before the Honourable High Court of Gujarat, being Company Application No.413 of 2016, under Sections 391 to 394 of the Companies Act, 1956, seeking directions for convening separate meetings of equity shareholders, preference shareholders, secured creditors and unsecured creditors of the petitioner transferor-company. The Honourable High Court, vide its order dated 15th September, 2016, directed the petitioner-company to convene and hold separate meetings of equity shareholders, preference shareholders and unsecured creditors for the purpose of considering and, if thought fit, approving with or without modifications, the arrangement embedded in the Scheme. By the said order, the Honourable High Court also directed that Mr. Nikhil K. Jain, Joint Managing Director of the petitioner-company and, in his absence, Mr. Hitesh K. Jain, Joint Managing Director of the petitioner-company and, in his absence, Mr. Dhaval K. Jain, Whole Time Director of the petitioner-company shall act as Chairman of the aforesaid meetings and in respect of any adjournment or adjournments thereof.
3. The petitioner of C.P.(CAA) No.12 of 2017, i.e. HM Financial Services Private Limited, had filed an application in the Honourable High Court of Gujarat, being Company Application No.414 of 2016, seeking dispensation of meeting of equity shareholders of the petitioner transferee-company. The Honourable High Court, vide its order dated 15th September, 2016, dispensed with the convening and holding of the meeting of equity shareholders of the petitioner-company in view of the consent in writing given by the equity shareholders. The Honourable High Court, vide its aforesaid order dated 15th September, 2016, observed that there are no secured and/or unsecured creditors of the petitioner-company.

4. Pursuant to the directions given by the Honourable High Court in Company Application No.413 of 2016, separate meetings of equity shareholders, preference shareholders and unsecured creditors of the petitioner transferor-company were convened and held at the Corporate Office of the petitioner transferor-company on 19th October, 2016, respectively, at 10.30 A.M., 11.30 A.M. and 2.00 P.M. by Mr. Nikhil Jain, Joint Managing Director of the petitioner-company, as Chairman of the meetings. The Chairman of the meetings filed his report on 25th October, 2016 stating that in the meeting of equity shareholders held on 19th October, 2016, resolution approving the proposed Scheme was passed unanimously, i.e. by 100%. The Chairman's report also discloses that the meeting of preference shareholders of the petitioner-company was held on 19th October, 2016, wherein resolution approving the Scheme was passed unanimously, i.e. by 100% in number and 100% in value. The Chairman's report also discloses that the meeting of unsecured creditors of the petitioner-company was held on 19th October, 2016, in which resolution approving the proposed Scheme was passed unanimously, i.e. by 100% in number and 100% in value of unsecured creditors present and validly voted.
5. The meeting of secured creditors of the petitioner-company was convened on 21st October, 2016, at 3.00 P.M. in the factory premises of the petitioner-company. However, the said meeting was adjourned to 18th November, 2016 by the Chairman on the request of some of the secured creditors present. Thereafter also, the meeting of secured creditors was adjourned two times and, finally, it was held on 27th December, 2016. The Chairman in his report dated 29th December, 2016 stated that finally the meeting of secured creditors of the petitioner-company was held on 27th December, 2016 at 3.00 P.M. and in the said meeting, both the secured creditors approved the proposed scheme by 100% in number and 100% in value of the secured creditors present and cast their votes.



6. The petitioner-companies, thereafter, filed the present petitions before this Tribunal on 25th January, 2017, seeking sanction of the Scheme. In view of the delay in filing the petition by the petitioner transferor-company, the petitioner transferor-company filed I.A. No.24 of 2017 seeking condonation of delay in filing the petition and the same was allowed by this Tribunal by its order dated 01.03.2017.
7. This Tribunal by order dated 1st March, 2017, admitted the petitions and ordered that notice of hearing in both the petitions should be advertised in English daily "Indian Express", Ahmedabad edition and Gujarati daily "Sandesh", Ahmedabad edition, not less than 10 days before the date fixed for hearing, calling for their objections, if any, on or before the date of hearing. This Tribunal also directed the petitioner-companies to issue statutory notice in form No.CAA3 to (i) Central Government through Regional Director, Gujarat, (ii) Income Tax Authority and (iii) Registrar of Companies asking them to make representations, if any, within 30 days from the date of receipt of notice and in case no representation is received by the Tribunal within stipulated period of 30 days, it should be presumed that the authorities have no representation to make. However, in CP(CAA) No.11 of 2017, this Tribunal further ordered notice to the Official Liquidator in form No. CAA3.
8. Pursuant to the aforesaid order dated 1st March, 2017, passed by this Tribunal, the petitioner-companies filed proof of service of publication and also proof of giving notices to the statutory authorities. The petitioner-companies also issued individual notices to their shareholders and filed proof of service. The Regional Director filed a common representation dated 31st March, 2017. The Official Liquidator filed representation dated 12th April, 2017 in the case of the transferor-company.



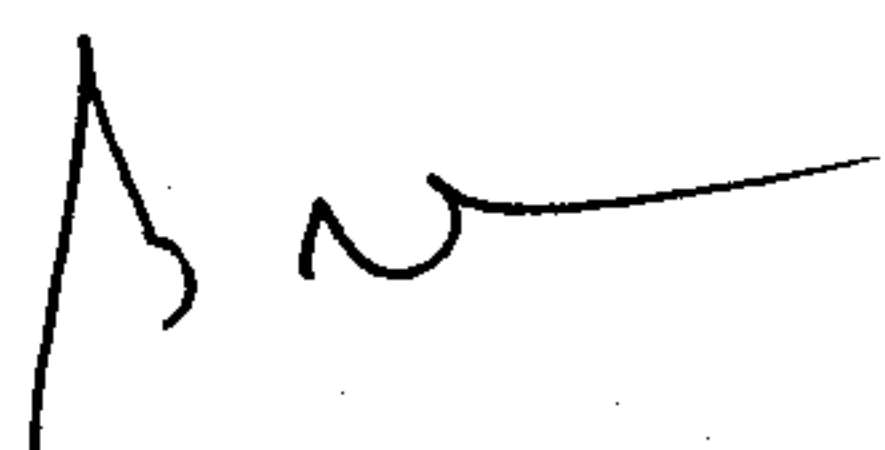
9. Heard learned Advocate, Mrs. Swati Soparkar, for the petitioner-companies and Mr. Pathik Acharya, Advocate, appearing for the Official Liquidator.
10. The Regional Director, in paragraph 2(e) of the common representation, stated that after the Scheme becoming effective, the transferee-company shall be renamed as "Heavy Metal and Tubes (India) Private Limited. Hence, the transferee-company shall follow the procedure to confirm the availability of name and shall pay the requisite fees for the same and shall file the requisite forms with the Registrar of Companies for change of name of the transferee-company. In the common Additional Affidavit filed by the Managing Director of the petitioner transferor-company on 4th April, 2017, in paragraph (iii), it is stated that upon the Scheme being effective, transferee-company shall comply with the requisite formality for availability of name as well as do needful for the payment of the requisite fees as also for filing requisite forms with the Registrar of Companies. In light of this statement in the additional affidavit, the observations of the Regional Director in paragraph 2(e) of the representation stand satisfied.
11. The Regional Director in his representation further stated that, as per the report of the Registrar of Companies, Gujarat, no complaints are there against the petitioner-companies and there is no complaint/representation against the Scheme of arrangement of the petitioner-companies. The Regional Director further stated in his representation that the proposed Scheme is not prejudicial to the interest of shareholders of the petitioner-companies and the public at large.
12. The Official Liquidator, in paragraph 12 of his report, stated that the Statutory Auditor, in the audit report as on 31.03.2016, stated that there were no disputed outstanding dues of service tax, duty of customs, duty of excise, Income Tax

except Sales Tax of the petitioner transferor-company. The Official Liquidator also stated that the Scheme provides that the transferee-company undertakes to engage all the employees of the specified undertaking of transferor-company. The Official Liquidator also stated in his representation that the Auditor of the petitioner-company certified that the Scheme of Arrangement is in conformity with the accounting standards prescribed in Section 133 of the Companies Act, 2013. The Official Liquidator also stated that the petitioner-company has to ensure statutory compliance of all applicable laws. The Official Liquidator quantified the fees at Rs. 15,000/-.

13. In the common additional affidavit filed by the petitioner-companies on 4th April, 2017, it is stated that the petitioner transferee-company has already submitted a certified from its Statutory Auditor confirming that the accounting treatment provided in the Scheme is in conformity with the applicable accounting standards. In paragraph 9 of the common additional affidavit, it is stated that in further compliance with clause (e) of sub-section (2) of Section 232, a supplemental balance sheet of the transferor-company, being unaudited provisional financial statement as on 30th September, 2016, has already been placed on record of this Tribunal as Annexure "B-1" to the petition.

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 arrangement, 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, Heavy Metal and Tubes Limited and HM Financial Services Private Limited, their equity shareholders, preference shareholders, secured creditors and unsecured creditors of the petitioner-companies and all concerned under the scheme.

16. The fees of the Official Liquidator are quantified at Rs.15,000/- in respect of CP(CAA) No11 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
1st day of May, 2017.

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