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IN THE NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH AT HYDERABAD

C.P.No.411/2016 [CP(TCAA)No.61/HDB/2017] & C.P.No.412/2016 [CP(TCAA)No.62/HDB/2017]

U/s 391 to 394 of the Companies Act, 1956

In the matter of

Pinnae Feeds Limited Bogole Village & Mandal, SPSR Nellore, Andhra Pradesh — 524142.

Andnra Pradesn - 524142

The Waterbase Limited Ananthapuram Village, T.P. Gudur Mandal, Nellore, Andhra Pradesh -- 524344.

Versus

- The Official Liquidator, Corporate Bhawan, 1stFloor, Bandlaguda, Nagole, <u>Hyderabad.</u>
- 2. The Regional Director (SER), Ministry of Corporate Affairs, Corporate Bhawan, 3rd Floor, Bandlaguda, Nagole, Hyderabad.

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

.... Petitioner/Transferor Company

.... Petitioner/Transferee Company



... Respondents

Order pronounced on: 14.11.2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Parties Present:

For Petitioners

Mr. R. Raghunandan Rao, Senior Counsel

Mr. P. Subash, Advocate

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For Respondents

Mr. M. Anil Kumar, Advocate for Official Liquidator.

Mr. B. Appa Rao, Central Government Standing

Counsel for Regional Director.

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

- 1. The Company Petitions bearing CP.No.411/2016 [CP(TCAA)No.61/HDB/2017] and CP.No.412/2016 [CP(TCAA)No.62/HDB/2017] were filed by Pinnae Feeds Limited (Petitioner/Transferor Company) and The Waterbase Limited (Petitioner/Transferee Company) respectively before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh under Sections 391 & 394 of the Companies Act 1956, by seeking the following prayers:
 - a) The Scheme, being Exhibit-A to the Petitions, is sanctioned so as to be binding with effect from the Appointed Date, on the Transferor Company, Transferee Company and its shareholders and creditors and all concerned.
 - b) The Transferor Company be amalgamated with the Transferee Company and all the assets and liabilities and the entire business of the Transferor Company be transferred to and vested in the Transferee Company in the manner provided for in the Scheme with effect from the Appointed Date.
 - c) On the Scheme becoming effective the Transferor Company be dissolved without an order of winding up, etc.
- 2. As per Gazette Notification GSR 1134(E) dated 14th December, 2016 issued by the Ministry of Corporate Affairs with effective date of 15th December, 2016 and in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 & Rule 23A of NCLT Rules R/w Rule 3 of Companies (Transfer of Pending Proceedings) Rules, 2016, jurisdiction is conferred on this Tribunal in respect of subject cases and thus pending cases also transferred from the Hon'ble High Court to the NCLT. Accordingly, the Hon'ble High Court transferred these cases to this Bench.



On transfer, the cases were listed before this Bench on 02.02.2017, 14.02.2017, 01.03.2017, 15.03.2017, 05.06.2017, 21.08.2017 and finally posted on 28.08.2017 for certain clarifications i.e. Change in Appointed Date, filing of IT returns not in place of Registered Office of Transferor and Transferee Companies situated, interests of one Mr. M. Subramaniam in both Petitioner Companies as Chief Financial Officer in Transferor Company and General Manager (Accounts) in Transferee Company, Non mentioning of Clause on fractional entitlements, the Board Resolution and Relationship between the Petitioner Companies etc., and directed to file required documents and submit clarification on or before 06.09.2017.

3. Heard, Mr. R. Raghunandan Rao, Senior Counsel along with Mr. P. Subash, Learned Counsels for the Petitioner Companies, Mr. M. Anil Kumar, Learned Counsel for the Official Liquidator, Mr. B. Appa Rao, Central Government Standing Counsel for RD and perused all pleadings along with material papers filed in its support.

Brief facts of case which are relevant to the issue in question, are submitted as under:

- a. Initially, the Petitioner/Transferor Company has filed Company Application No.583 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of Equity Shareholders and Secured Creditors of the transferor Company for consideration of the proposed Scheme of Amalgamation of Petitioner/Transferor Company with The Waterbase Limited (Transferee Company) as detailed in the Scheme.
- b. The said Company Application No.583 of 2016 was disposed of by Hon'ble High Court vide its Order dated 20.07.2016 dispensing with the conducting of meeting of the Equity Shareholders and Secured Creditors of Petitioner/Transferor Company as they filed consent letters



before the Hon'ble High Court. It is further ordered that a meeting of the Unsecured Creditors of the Petitioner/Transferor Company be convened and held on 24.08.2016 and appointed Shri Ganesh Anantha Narayana, as the Chairman of the said meeting. The Chairman conducted the meeting and filed a Report before the Hon'ble High Court stating that 27 Unsecured Creditors representing 52% of the total outstanding value of Unsecured Creditors attended the said meeting in person or through proxies and voted for the Scheme. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for approval of the scheme.

- c. Similarly, the Petitioner/Transferee Company has filed Company Application No.618 of 2016 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for dispensing with the convening of meeting of Unsecured Creditors of the Petitioner/transferee Company for consideration of the proposed Scheme of Merger/Amalgamation of Petitioner/Transferee Company with Pinnae Feeds Limited (Transferor Company) as detailed in the Scheme.
- d. The said Company Application No.618 of 2016 was disposed of by Hon'ble High Court vide its Order dated 26.04.2016 dispensing with the conducting of meeting of the Unsecured Creditors of Petitioner/Transferee Company as they filed no objection certificates of 80% unsecured creditors before the Hon'ble High Court. It is further ordered that a meeting of the Equity Shareholders of the Petitioner/Transferee Company be convened and held on 08.06.2016 and appointed Ms. Vallabhaneni Santhisree, as the Chairperson of the said meeting. The Chairperson conducted the meeting and filed a Report before the Hon'ble High Court stating that 89 Equity Shareholders representing 2,02,16,141 equity shares i.e. 98% of the equity shareholders holding 99.99% of the number of shares of the Petitioner/Transferee Company voted for the Scheme. Equity



shareholders of the applicant company exercised all the thee methods of voting i.e. e-voting, postal ballot and personally voting in the meeting.

It is further ordered that a meeting of the Secured Creditors of the Petitioner/Transferee Company be convened and held on 08.06.2016 and appointed Ms. Deepti Anand, as the Chairperson of the said meeting. The Chairperson conducted the meeting and filed a Report before the Hon'ble High Court stating that the quorum fixed for the meeting was 2 secured creditors, but in the meeting 3 Secured Creditors representing 98% of the outstanding value of loan voted for the Scheme.

After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.



Details of the Petitioner/Transferor Company

- i) The Petitioner/Transferor Company i.e. Pinnae Feeds Limited incorporated under the provisions of the Companies Act, 1956 on 05.07.2012 vide Corporate Identification No.U05004AP2012PLC097741. The Registered Office of the Company was situated in Tamilnadu and the same was changed to Andhra Pradesh on 18.09.2015. Presently, the Registered Office is situated at Bogole Village & Mandal, SPSR Nellore, Andhra Pradesh 524142.
- The main objects of the Transferor Company as per its Memorandum of Association, in brief are to carry on business of manufacturing feed and meal for fresh water prawn, shrimps, marine shrimps, including but not limited to mussels, crabs, lobsters, oysters, salmonidae, tunas, hilsa, bhetki, mackeresl, squids, octopus, clams, pigs, deer, mink, creatures of commercial, industrial or domestic use of consumption and all

products and by-products thereof and in relation to such a business., etc.

The Authorized Share Capital of the Petitioner/Transferor Company as on 31.03.2016 is Rs.15,00,00,000/- divided into 1,50,00,000 Equity Shares of Rs.10/- each. Issued, Subscribed and Paid-up Share Capital of the Petitioner/Transferor Company as on 31.03.2016 is Rs.12,00,00,000/- divided into 1,20,00,000 Equity Shares of Rs.10/- each.

f. Details of the Petitioner/Transferee Company

- Limited is a Public Limited Company originally incorporated under the provisions of the Companies Act, 1956 on 23.11.1987 under the name Thapar Waterbase Limited. Subsequently, on 11.02.1992, the name of the Company was changed to The Waterbase Limited. The Registered Office of the Company was situated in Delhi and the same is changed to Andhra Pradesh on 29.09.1994. Presently, the Registered Office is situated at Ananthapuram Village, T.P. Gudur Mandal, Nellore, Andhra Pradesh 524344.
- ii) The main objects of the Petitioner/Transferee Company as per its Memorandum of Association, in brief are to carry on though farming, cultivation, culturing, manufacturing, harvesting or any means, the business of hatching, growing, production, harvesting, processing, storing, refrigerating, cooking curing, tanning, weaving, fabricating, marketing, selling, importing and exporting or otherwise distributing of crustacean, mollusca, aves, lepidoptera, reptilia etc.
- iii) The Authorized Share Capital of the Petitioner/Transferee Company as on 31.03.2016, is Rs.45,00,00,000/- divided into



4,50,00,000 Equity Shares of Rs.10/- each. The Issued, subscribed & Paid up capital of the company is Rs.38,60,32,500/- divided into 3,86,03,250 equity shares of Rs.10/- each.

- 5. The object of Scheme of Merger/Amalgamation is as follows:
 - The proposed Scheme of Amalgamation would enable the Transferor Company in enhancing the scale of operations and reduction in overheads, administrative, managerial and other expenditure, operational rationalization, sharing of technology, organizational efficiently, and optimal utilization of various resources.
 - b) The proposed Scheme of Amalgamation would enable the Transferor and Transferee companies to consolidate their business operations and provide significant impetus to their growth since both the companies are engaged in similar areas of business.

The proposed Scheme of Amalgamation would result in improved shareholder value for Transferor and Transferee Companies by way of improved financial structure and cash flows, increased asset base and stronger consolidated revenue and profitability.

- d) The proposed Scheme of Amalgamation would result in enhanced leveraging capability of the combined entity which in turn will allow the combined entity to undertake larger expansion strategies and to tap bigger opportunities in the industry.
- e) The proposed Scheme of Amalgamation would result in consolidation of managerial expertise of the Companies will facilitate greater focus and utilization of resources. Amalgamation will give additional strength to the operations and management of the amalgamated company.



- 6. The following are brief terms of Scheme of Amalgamation:
 - a) The Appointed Date for the purpose of this Scheme has been proposed as 01.08.2015.
 - b) With effect from the Appointed Date, the entire business and whole of the undertaking, all assets and liabilities of the Transferor Company shall be transferred to and vested in and/or deemed to be transferred to and vested in the Transferee Company, so as to become the assets and liabilities of the Transferee Company.
 - o) On the scheme sanctioned, the Petitioner/Transferee Company shall without any further application or deed, issue and allot to the shareholders, whose name appears in the Register of Members of the Petitioner/Transferor Company as on the record date or to their respective heirs, executives, administrators or other legal representatives or the successors-in-title, as the case may be, in the following manner:
 - i) 4 fully paid up Equity Shares of Rs.10/- each of the Transferee Company for every 17 Equity Shares of Rs.10/- each held by the shareholders in Transferor Company.
 - ii) No shares shall be issued in respect of fractional entitlements, if any, by the Transferee Company, to the members of transferor Company at the time of issue and allotment of equity shares.
 - On the scheme becoming effective, all employees of the Transferor Company in service on the Effective Date shall become employees of Transferee Company on such date without any break or interruption in their service and on terms and conditions not less favourable than those subsisting with reference to the Transferor Company as on the said date.



- e) On the scheme becoming effective, the Transferor Company shall without any further act or deed stand dissolved without being wound up.
- 7. The Board of Directors of the Petitioner Companies at their respective meetings held on 26.08.2015 approved the Scheme in question.
- 8. It is stated by the Petitioner/Transferor Company that the Hon'ble High Court vide its Order dated 20.07.2016 passed in C.A.No.583/2016 dispensed with the conducting of meeting of the Equity Shareholders and Secured Creditors of Petitioner/Transferor Company as they filed consent letters before the Hon'ble High Court. It is further ordered that a meeting of the Unsecured Creditors of the Petitioner/Transferor Company be convened and held on 24.08.2016 and appointed Shri Ganesh Anantha Narayana, as the Chairman of the said meeting. The Chairman conducted the meeting and filed a Report before the Hon'ble High Court stating that 27 Unsecured Creditors representing 52% of the total outstanding value of Unsecured Creditors attended the said meeting in person or through proxies and voted for the Scheme. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

It is stated by the Petitioner/Transferee Company that the Hon'ble High Court vide its Order dated 26.04.2016 passed in C.A.No.618/2016 dispensed with the conducting of meeting of the Unsecured Creditors of Petitioner/Transferee Company as they filed no objection certificates of 80% unsecured creditors before the Hon'ble High Court. It is further ordered that a meeting of the Equity Shareholders of the Petitioner/Transferee Company be convened and held on 08.06.2016 and appointed Ms. Vallabhaneni Santhisree, as the Chairperson of the said meeting. The Chairperson conducted the meeting and filed a Report before the Hon'ble High Court stating that 89 Equity Shareholders representing 2,02,16,141 equity shares i.e. 98% of the equity shareholders holding 99.99% of the number of shares

of the Petitioner/Transferee Company voted for the Scheme. It is further ordered that a meeting of the Secured Creditors of the Petitioner/Transferee Company be convened and held on 08.06.2016 and appointed Ms. Deepti Anand, as the Chairperson of the said meeting. The Chairperson conducted the meeting and filed a Report before the Hon'ble High Court stating that 3 Secured Creditors representing 98% of the outstanding value of loan voted for the Scheme.

The Learned Counsel filed an Affidavit dated 13.03.2017 stating that as per the directions of the Hon'ble High Court, the Petitioner Companies got published Newspaper advertisement of the "Notice of Petition" in English Daily (Business Standard) and Telugu Daily (Andhra Bhoomi) on 04.01.2017 intimating the date of hearing fixed on 02.02.2017 and filed a proof of the same before this Tribunal on 14.03.2017. The Learned Counsel further submitted that they have not received any complaints/objections against the proposed Scheme of Amalgamation from the Shareholders, Creditors viz. secured and unsecured, Statutory Authorities.

For various queries raised by this Bench, the clarification affidavits filed by the Petitioner/Transferor Company i.e. Pinnae Feeds Limited are as under:-

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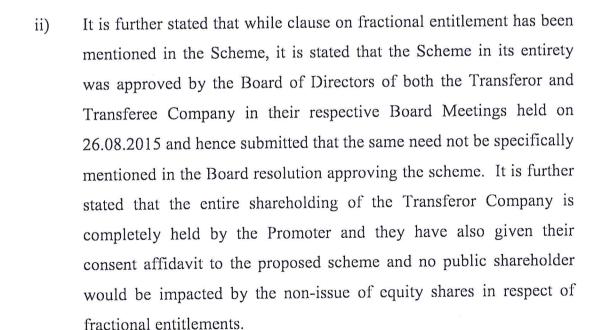
- Transferor Company was earlier situated in the State of Tamilnadu and was shifted to Hyderabad on 26th November, 2015. However, the Income Tax assessments of the Transferor Company are still continues to take place in Chennai. Since the Assessing Circle of the Transferor Company is based in Chennai, the Transferor Company had served notice to the Income Tax Department at Chennai inviting their comments on the Scheme of Amalgamation.
- ii) Affidavit dated 31.08.2017 signed by Shri M. Subramanian by stating that he is the Chief Financial Officer and authorised representative of the Petitioner/Transferor Company and further stated that the

iii)

Company has been doing its business in Chennai and shifted its registered office to Andhra Pradesh only on 29th November, 2015 and has filed its returns for the financial years 2015-16 in Chennai. Hence the Transferor Company submitted the application for no-objection for the Scheme with the Income Tax Department at Chennai.

It is further submitted that Mr. M. Subramanian, was deputed on full time basis to Transferor Company on 25.03.2015 by way of a resolution, to oversee the Finance and Accounts function of the Transferor Company and to facilitate the proposed Scheme of Amalgamation. Before, being deputed, he was the General Manager-Accounts of the Transferee Company. The deputation was done in line with all necessary approvals required under the Companies Act, (Listing Obligations and **SEBI** and the 2013 Requirements) Regulations, 2015 as amended from time to time. Upon expiry of deputation, unless the deputation is extended, his services will automatically revert back to the Transferee Company. In the light of this, the Board of Transferee Company had authorised him to sign various documents and proceedings on its behalf pertaining to the Scheme of Amalgamation vide resolution dated 26.08.2015. Though authorised by the Transferee Company, he has not signed or authenticated any documents in relation to the Scheme of Amalgamation filed on behalf of the Transferee Company, whereas he has signed and authenticated all documents only for the Transferor Company. It is also further submitted that the actual cost incurred by the Transferee Company by way of his remuneration is being reimbursed on cost basis by the Transferor Company. It is further stated that under the Companies Act, 2013, there is no prohibition for a person to be employed by two companies. However, there is a restriction for "Key Managerial Person" under Section 203 of the Act. To the effect that Key Managerial Person of a company cannot hold 'office' in more than one company except in its subsidiary company. The term 'office' would not mean employment of any level.

- 11. For various queries raised by this Bench, the clarification affidavits filed by the Petitioner/Transferee Company i.e. The Waterbase Limited are as under:-
 - Affidavit dated 17.06.2017, stating that the Transferee Company is a i) listed company and its shares are listed on the Bombay Stock Exchange Limited (BSE) and the Petitioner Companies have filed scheme during the year 2015-16. The Scheme in its present form has been approved by SEBI and BSE observation letter dated 04.01.2016. Further, the Scheme has been approved by the Shareholders and Secured and Unsecured Creditors of the Petitioner Companies. The consideration for the merger in the form of share exchange ratio was agreed based on the valuation performed by the independent valuer considering the appointed date. If there is any change in the Appointed Date, it would also require the share exchange ratio to be altered, which would require fresh approval from the stakeholders like shareholders, creditors and stock exchange. This will effectively result in redoing the entire process and in view this it is requested that the Hon'ble Tribunal may retain the Appointed Date as 01.08.2015.





- iii) It is also stated that Transferee Company does not hold any shares in the Transferor Company and as such, the Transferor Company is not a subsidiary of the Transferee Company and as the date of filing the Scheme, both the Companies had common promoters i.e. Karan Chand Thapar & Bros (Coal Sales) Limited and the promoter hold 100% of share capital of the Transferor Company.
 - Affidavit dated 31.08.2017 signed by Shri G. Venkatram, Company Secretary of The Waterbase Limited, by stating that the Transferee Company has been filing its Income Tax returns in Kolkata since its inception. The Company was originally incorporated in Kolkata and its registered office was subsequently changed to Nellore, Hyderabad while the management control continued in Kolkata. It is further submitted that under the existing practice and law relating to Income Tax, such filing is permissible and has been done with the knowledge of the Income Tax Department without any demur or objection from them. Further, the Transferee Company has been regularly filing all the applicable Income Tax Returns specifying the primary place of business as Kolkata. It is further submitted that as per Section 124 of the Income Tax Act any assesse carrying on the business at different places, can be assessed by an assessing officer within whose territorial jurisdiction such an assesse has its primary place of business.
- v) It is further stated that swap ratio for the issue of shares by the Transferee Company was fixed on the basis of valuation report which resulted in a swap ratio of 4 shares of Transferee Company for every 17 shares held in Transferor Company.
- 12. The Official Liquidator vide his Report inter-alia stated that the affairs of the Transferor Company appears to have not been conducted in a manner prejudicial to the interests of the members or to public interest.



iv)

13. The Regional Director (SER), Hyderabad has filed a common affidavit dated 15.02.2017 in C.P.Nos.411/2016 and 412/2016, by inter-alia stating that the Petitioner Companies are regular in filing statutory returns, and no complaints, no investigations and no inspections are pending against it.

He has further stated that in pursuant to the General Circular No.1/2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of Income Tax Department is required to be sought under Section 391 or 394 of the Companies Act, 1956, a letter dated 05.01.2017 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. However, no comments/objections of the Income Tax Department were received in response to the said notice till date.

- The Board of Directors of the Petitioner Companies at their respective meetings held on 26.08.2015 have duly considered the Scheme of Amalgamation in question and it was approved. It is to be mentioned herein that the Scheme in question is not opposed by Shareholders, Creditors and other stake holders, any statutory authorities viz. Official Liquidator, Regional Director (SER), Income Tax, SEBI and Self-Regulatory Organisation viz. BSE and the Petitioner Companies are admittedly following all rules/regulations of Companies Act as stated by Official Liquidator/Regional Director.
- 15. We have also considered the various clarifications provided by the petitioner companies by way of affidavits especially on the issue of appointed date, filing of income tax returns not in the place where the registered office of the petitioners Companies are situated, effect of fractional shares, deputation of a person from Transferee Company to Transferor Company etc.
- 16. Further, we have also considered the clarification/comments of the Income Tax Department, Kolkata dated 09.03.2017 stating no objection for the amalgamation in the case of transferee Company. During various hearings held, the Counsel for the RD submitted that a letter dated 05.01.2017 was



addressed to the Income Tax Department seeking their comments/objections to be provided within fifteen days, but no reply was received as per the affidavit dated 15.02.2017. Transferor Company also served a notice dated 08.12.2016 to Income Tax Department, Chennai inviting their comments. However, during the hearing held on 01.03.2017, the Bench once again directed the Counsel for RD to obtain the comments/objections from the Income Tax Department before the next date of hearing i.e. 15.03.2017. However, from the records available in the file, no reply of Income Tax Department is available for the Transferor Company.

- 17. We have perused all the pleadings, Orders of the Hon'ble High Court, Clarification Affidavits filed by both the Petitioner Companies, Report of the Official Liquidator & Regional Director (SER) and also relevant provisions of Companies Act and based on the same we are convinced that the Petitioner Companies have complied with statutory requirements as required under Section 391 & 394 and other relevant provisions of Companies Act, 1956 as detailed supra. Hence, we are convinced that the Company Petitions deserved to be allowed as prayed for.
- In the result, the C.P.No.411/2016 [CP(TCAA)No.61/HDB/2017] and C.P.No.412/2016 [CP(TCAA)No.62/HDB/2017] are allowed with the following directions:
 - a. Sanctioned the Scheme of Amalgamation as proposed (which is enclosed along with material papers with the Petition) and fixed Appointed Date as 01.08.2015, and it is ordered that the same is binding on all the Equity Shareholders/Members, Creditors (Secured & Unsecured), and employees of both the Petitioner Companies.
 - b. On the Scheme becoming effective the Transferor Company be dissolved without an order of winding up, etc.

- c. The Petitioner Companies are directed to take appropriate steps to submit the said Scheme to the Registrar of Companies within 30 days from the date of receipt of Copy of this order.
- d. The Petitioner Companies are directed to issue newspaper publication with respect to approval of Scheme of Amalgamation in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
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- e. The Petitioner Companies are further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Amalgamation under the Provisions of the Companies Act.
- f. Liberty is granted to any party/parties, who are aggrieved by this order, to seek any direction(s) by way of filing miscellaneous application in the present CPs.
- g. The Petitioner Companies are directed to strictly adhere to the above directions and applicable provisions of the Companies Act.

RAVIKUMAR DURAISAMY MEMBER (TECHNICAL)

801-

RAJESWARĂ RAO VITTANALA MEMBER (JUDICIAL)

ERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमणित प्रति CENTIFIED TRUE COPY केत संख्या CASE NUMBER.C: PAD: LAM 2016 (EM) \ & निर्णय का तारीख

DATE OF JUDGEMENT. 14:11:20 प्रति तैयार किया गया तारीख

COPY MADE READY ON. 21-11-2019