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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

CP (CAA) No.02/BB/2020  
U/ss 230 and 232 and other applicable  
Provisions of the Companies Act, 2013  
R/w Companies (CAA) Rules, 2016

**IN THE MATTER OF:**

**Strides Emerging Markets Limited**  
(Formerly Strides Emerging Markets Pvt. Ltd.)  
Regd. Off: "Strides House",  
Bilekahalli, Bannerghatta Road,  
Bengaluru – 560 076.

- Petitioner Company /  
Transferor Company 3

**Date of Order: 28<sup>th</sup> May, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

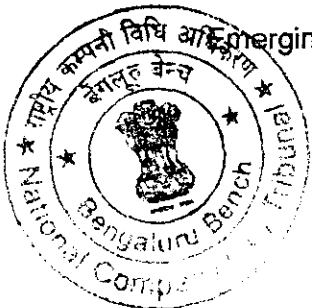
**Parties/Counsels Present:**

For the Petitioner : Mr. Saji P. John, Advocate  
For the ROC : Smt. Prema Hatti with Mr K. Nagaraj, Advocates

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. This Company Petition has been filed by M/s. Strides Emerging Markets Limited (hereinafter referred to as 'Petitioner Company/Transferor Company 3') under Sections 230 and 232 and other applicable provisions of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by *inter alia* seeking that the Scheme of Amalgamation of Arrow Remedies Private Limited ('Transferor Company 1') and Fagris Medica Private Limited ('Transferor Company 2') and Strides Emerging Markets Limited ('Transferor Company 3') with Strides Pharma



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Science Limited ('Transferee Company') and their respective Shareholders and Creditors, be sanctioned by this Tribunal so as to be binding on the Petitioner Company and their respective Shareholders, the Petitioner Company shall be dissolved without being wound up, etc.

2. Brief facts of the case, which are relevant to the issue in the instant Company Petition, are as follows:

(1) **M/s. Strides Emerging Markets Limited** (hereinafter referred to as 'Petitioner Company/Transferor Company3') was initially incorporated as a Private Limited Company, under the name and style '*Strides Emerging Markets Private Limited*' on 01.06.2012 under the provisions of the Companies Act, 1956 with the ROC, Bangalore. Subsequently, it was converted to a Public Limited Company and its name was changed to '*Strides Emerging Markets Limited*' vide fresh Certificate of Incorporation dated 15.11.2017 with CIN: U24132KA2012PLC064214. The Petitioner Company is a wholly-owned subsidiary of Strides Pharma (Cyprus) Limited (Regn. No. HE258780), a Company incorporated under the laws of Cyprus, which in turn is an indirect wholly-owned subsidiary of the Transferee Company. Its registered office is situated at "Strides House", Bilekahalli, Bannerghatta Road, Bengaluru-560076. Its Authorised Capital as on 30.09.2019 is Rs.10,00,00,000/- divided into 1,00,00,000 Equity Shares of Rs.10/- each and its Issued, Subscribed and Paid-up Capital is Rs.5,62,65,620/- divided into 56,26,562 Equity Shares of Rs.10/- each fully paid-up. Its main objects *inter alia* are to carry on the business of manufacturing & marketing of Pharmaceutical Formulations and such other related pharmaceutical preparations for human consumption in India or elsewhere in the world especially in emerging markets, etc.

(2) The Board of Directors of the Petitioner Company/Transferor Company3 at its meeting held on 04<sup>th</sup> September, 2019 have approved and adopted the Scheme of Amalgamation and *inter alia* resolved as under:



"RESOLVED THAT pursuant to the provisions of Sections 230 to 232 and other applicable provisions, if any, of the Companies Act, 2013 and the rules framed thereunder, as amended or re-enacted from time to time, and in accordance with the provisions of the Memorandum of Association of the Company, and subject to the sanction by the National Company Law Tribunal and subject to such terms and conditions and modification(s), as may be imposed, prescribed or suggested by the appropriate authorities and subject to such other approvals, consents, permissions, and/or sanctions of any appropriate authority, body or institution and subject to the approval of the shareholders and creditors of the Company, the consent of the Board be and is hereby accorded to the Scheme of Amalgamation, whereby the Company, Arrow Remedies Private Limited and Fagris Medica Private Limited be amalgamated with Strides Pharma Science Limited from Appointed Date i.e., April 1, 2019."

- (3) M/s. Strides Pharma Science Limited (formerly known as Strides Shasun Limited) (hereinafter referred to as 'Transferee Company') is a Public Limited Company incorporated on 28.06.1990 under the provisions of Companies Act, 1956 bearing CIN: L24230MH1990PLC057062 and having its registered office at 201, Devavrata, Sector 17, Vashi, Navi Mumbai-400703, Maharashtra. Its main objects inter alia are to carry on business in India and elsewhere as manufacturers, producers, processors, formulators, sellers, importers, exporters, merchants, distributors, traders and dealers in proprietary medicine, etc.
- (4) M/s. Arrow Remedies Private Limited (formerly known as Lex. Pharma Private Limited) (hereinafter referred to as 'Transferor Company 1') is a Private Limited Company incorporated on 12.09.2015 under the provisions of the Companies Act, 2013 bearing CIN: U33111MH2015FTC268380 and having its registered office at 201,



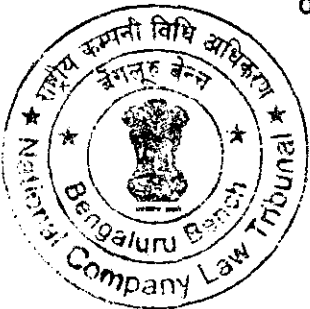
Devavrata, Sector 17, Vashi, Navi Mumbai-400703, Maharashtra. It is engaged in providing support services to its group companies.

- (5) M/s. Fagris Medica Private Limited (hereinafter referred to as 'Transferor Company 2') is a Private Limited Company incorporated on 04.09.2008 under the provisions of the Companies Act, 1956 bearing CIN: U24230 MH2008PTC271062 and having its registered office at 201, Devavrata, Sector 17, Vashi, Navi Mumbai-400703, Maharashtra. It is engaged in the business of marketing and commercializing of pharmaceutical products.
- (6) M/s. BSR & Co. LLP, Chartered Accountants, the Statutory Auditors of the Transferee Company, vide Certificate dated 18.10.2019 has *inter alia* opined that the accounting treatment proposed in paragraph 11 of Part D of the Scheme, once approved by the relevant authority will be in conformity with Ind AS 103 i.e. the Accounting Standards provided u/s 133 of the Companies Act, 2013.
- (7) It is declared that the matter regarding which the Petition has been made, a similar Petition shall also jointly be made by the Transferor Company 1, Transferor Company 2 and Transferee Company with the Hon'ble NCLT, Mumbai Bench, where the registered offices of the Transferor Company 1, Transferor Company 2 and the Transferee Company are situated.
- (8) It is stated that the entire Equity Share Capital of the Petitioner Company is held by Strides Pharma (Cyprus) Limited, a Company incorporated under the laws of Cyprus, which in-turn is an indirect wholly-owned subsidiary of the Transferee Company. Upon this Scheme becoming effective, as the Transferee Company is the ultimate holding Company of the Petitioner Company, there shall not be any issue of shares as consideration to the shareholders of the Petitioner Company. The entire Share Capital of the Petitioner Company shall be cancelled



and extinguished as per Part C of the scheme. Thus, there is no valuation report in this regard.

- (9) The benefits sought to be achieved by the Scheme are as follows:
- (a) *Simplified management structure, leading to better administration and reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, elimination of duplication and optimize operational efficiency.*
  - (b) *The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilization of the available resources.*
  - (c) *Simplification of group structure by eliminating multiple companies within the group.*
- (10) It is stated that the proposed Scheme is sought to be made under the provisions of Sections 230 and 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 and the same if sanctioned by the Hon'ble Tribunal will take effect from April 1, 2019, the Appointed Date.
- (11) It is also stated that the Petitioner Company is an unlisted public company. Further, the Transferee Company undertakes to pay any outstanding tax demands (including those tax demands that are outstanding on the Transferor Companies) once the matter reaches finality.
- (12) It is stated that the Petitioner Company are not required to issue notice of Amalgamation to the Joint Director, Enforcement Directorate and the Directorate of Enforcement as there is no ongoing investigations against the Petitioner Company.
- (13) It is stated that no investigation proceedings are pending against the Petitioner Company under Sections 235 to 251 or any other provisions of the Companies Act, 1956 or Sections 206 to 229 of the Companies



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Act, 2013 or any other provisions of the Companies Act, 2013. Further, there is no investigation pending against the Petitioner Companies under any law.

3. The Transferor Company-3 had filed CA (CAA) No.66/BB/2019 before this Tribunal seeking to dispense with the meetings of the Equity Shareholders and Un-secured Creditors of Transferor Company-3, for considering the Scheme. The Tribunal vide its Order dated 04.12.2019 has inter alia dispensed with the meetings of the Equity Shareholders and Un-secured Creditors of the Transferor Company-3.
4. The Tribunal vide its Order dated 07.01.2020 directed the Petitioner Company to serve the Notice to the Regional Director(SER), Hyderabad, Registrar of Companies, Karnataka, Official Liquidator, Principal Chief Commissioner of Income Tax, Karnataka & Goa, Dy. Commissioner of Income Tax, Competition Commission of India, Reserve Bank of India, and also directed to cause paper publication in 'The Financial Express', English newspaper and in 'Vijayavani', Kannada newspaper and to file proof of the same. Vide Compliance Affidavit dated 05.02.2020, it is affirmed that the Petitioner Company have served the notices as per the above Order and also caused paper publication in the said newspapers on 27.01.2020 with regard to the notice of hearing of the Petition, and they have not received any objection from any party about the acceptance of Scheme.
5. The Competition Commission of India vide its letter No.N-20(10)/NF-456/2020/CD/1816 dated 18.02.2020 has inter alia stated that the Scheme has not been filed with the Commission under the provisions of the Competition Act, 2002 and that an undertaking may be sought from the Companies involved that CCI approval is not required for the said Scheme. In this regard, the Petitioner stated that it is not required to issue notice of Combination to Competition Commission of India due to the exemption provided under Notification No.S.O.988(E) dated March 27, 2017 issued by the Ministry of Corporate



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Affairs read with the Schedule I to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, as amended from time to time.

6. The Registrar of Companies, Karnataka vide letter No.ROCB/Legal/C.P(CAA)No.02/BB/2020 dated 14.02.2020 has *inter alia* observed as under:

- (1) *The Transferor Companies 1 and 2 and the Transferee Company are registered with ROC, Mumbai. The Transferee Company No.3 is registered with ROC, Karnataka.*
- (2) *The entire Paid up share capital of the Transferor Company No.3 is held by foreign entity viz. Strides Pharma (Cyprus) Limited, an indirect wholly owned subsidiary of the Transferee Company. Upon the Scheme becoming effective, as the Transferee Company is the ultimate holding company of the Petitioner Company, there shall not be any issue of shares as consideration to the shareholders of the Petitioner Company.*
- (3) *Since, the entire Shares of the Transferor Company No.3 is held by a Cyprus Registered Company, the notice may be issued to Enforcement Directorate for their comments.*
- (4) *The Transferee Company is a listed Company and its shares are listed on National Stock Exchange of India Limited and BSE Limited. Approval of NSE and BSE may be asked to be shown.*
- (5) *Transferor Company No.3 has related party transactions during the year 2018-19. Necessary compliance u/s 188 of the Companies Act, 2013 may be called for before the approval of the Scheme.*
- (6) *The Transferor Company No.3 is a continuous loss making company and any set off accumulated loss of Rs. 5.13 Crores with profit making company i.e., Transferee Company may reduce the outflow of Income tax to the Tax Authorities.*



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- (7) *The Paid up Capital given in the Scheme of the Transferee Company is not matching with the master data of the Company. As per MCA records, the Transferee Company has two open charges.*
- (8) *It is declared that there are no prosecutions, complaints, technical scrutiny/inspections pending against the Petitioner Companies.*

7. The Regional Director (SER), Ministry of Corporate Affairs, Hyderabad, vide Affidavit dated 26.02.2020 has, in addition to the aforesaid observations of ROC, further submitted as under:

- (a) *Clubbing of Authorised Capital is not mentioned in the Scheme. Hence, there is no question of clubbing of Authorised Capital.*
- (b) *The shares of Transferor Company No.3 are listed on the BSE Ltd and NSE Ltd. and NOC from Stock Exchanges is therefore required.*
- (c) *As per Clause 9.1 of the Scheme, the entire Paid up Share Capital of the Transferor Company No.3 is held by either directly or through its indirect wholly owned subsidiaries by the Transferee Company and its nominee(s) and upon the Scheme becoming effective, as the Transferee Company shall become ultimate holding company of the Transferor Companies and hence no shares shall be issued as consideration to the shareholders of the Transferor Companies.*
- (d) *The Transferor Company No.3 is a continuous loss making company and any set off accumulated loss of Rs.5.13 Crores with profit making company i.e. Transferee Company may reduce the outflow of Income Tax to the Tax Authorities. Hence, Company be advised to obtain NOC from the concerned IT Department before approval of the Scheme and the IT Department be heard in the matter.*

8. In response to the ROC/RD's observations, the Authorized Signatory of the Petitioner Company has filed reply Affidavit dated 19.03.2020 by *inter alia* stating as follows:



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- (1) As regards clubbing of Authorised Capital, it is submitted that Clause 10 of the said Scheme provides for Increase in Authorized Capital of the Transferee Company.
- (2) As regards the shares of Transferor Company No.3 are listed on the BSE Ltd. and NSE Ltd, it is submitted that the shares of Transferor Company No.3 are not listed on the BSE Ltd. and the NSE Ltd. However, the Equity Shares of the Transferee Company is listed on the BSE and NSE. Pursuant to SEBI Circulars, as amended from time to time, the Transferee Company had by its two separate letters, both dated 06.11.2019 served a draft Scheme of Amalgamation on the BSE and the NSE.
- (3) As per Clause 9.1 of the Scheme of Amalgamation, the Transferee Company is the ultimate holding Company of Transferor Companies, and therefore there shall not be any issue of shares as consideration to the shareholders of any of the Transferor Companies.
- (4) As regards observation No.3 e), it is submitted that as directed by this Tribunal, Notice prepared by the Registry along with the Petition has been served upon the Deputy Commissioner of Income Tax, Circle 6(1)(2), Room No.238, 2<sup>nd</sup> Floor, BMTC Bldg, Koramangala, Bangalore-560095, where the assessment of Petitioner Company/Transferor Company No.3 are made, on 16.01.2020. As per the said Notice, the IT Department was directed to submit their reply in connection with the Petition, to this Tribunal on or before 10.02.2020. Further, the IT Department has not raised any objections in the matter, before this Tribunal.
- (5) As regards observation No.3 f), it is submitted that the Authorized, share capital of the Transferee Company as mentioned in the Scheme, as at 31.03.2019 is Rs.1,76,75,00,000/- divided into 17,67,50,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Share Capital is Rs.89,54,94,760/- divided



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into 8,95,49,476 Equity Shares of Rs.10/- each fully paid. Further, as on 31.01.2020 its Authorised Share Capital is Rs.1,76,75,00,000/- divided into 17,67,50,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-up Share Capital is Rs.89,56,54,640/- divided into 8,95,65,464 Equity Shares of Rs.10/- each, fully paid up. Further, the Transferee Company has issued 15,988 equity shares of nominal value of Rs.10/- each on exercise of the equity stock options under the various Existing Stock Options Plans by eligible employees of the Transferee Company, subsequent to 31.03.2019. Further, the master data of the Transferee Company is updated to reflect the Paid-up Share Capital of Rs.89,56,54,640/- as on date.

9. The Official Liquidator vide OLR No.35 of 2020 dated 14.05.2020 in C.P. (CAA) No.02/BB/2020 has *inter alia* stated that for scrutiny of the books of accounts and records of the Transferor Company-3, has engaged M/s. Bheemashanker Deshmukh & Co., Chartered Accountants, which after examining the affairs of the Transferor Company, has *inter alia* concluded in its report dated 17.02.2020 that the affairs of the Company have been conducted in a manner NOT prejudicial to the interest of its members. Therefore, the Official Liquidator prays that suitable order(s) may be passed on the merits of the case.

10. The Reserve Bank of India vide its letter bearing No. FE.BG.FID.No.1906/21.08.587/2019-20 dated 11.02.2020 has *inter alia* submitted that it is the duty of the companies undergoing compromise/arrangement/amalgamation to comply with the requirements of various laws, including the rules, regulations and guidelines prescribed by RBI, viz., the companies may have to comply with Foreign Exchange Management Act, 1999, and the rules and regulations made thereunder. It is also submitted that as a Regulator, it will not be ethical on the part of RBI to vet individual cases, as it will preclude it from taking action on contraventions, if any, committed by such companies.



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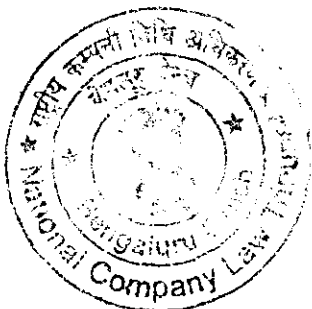
11. Intimation of the Scheme of Amalgamation was sent to all relevant statutory authorities/regulators. Wherever no response has been received from the said authorities/regulators, it is deemed that they have no objection to the proposed Scheme.
12. Heard Mr. Saji P. John, learned Counsel for the Petitioner and Smt. Prema Hatti, learned Standing Counsel for the ROC through Video Conference. We have carefully perused the pleadings of the parties and the extant provisions of the Companies Act, 2013 and the Rules made thereunder and the Law on the issue.
13. We have considered the facts of the case as mentioned in the Petition, the report of the Regional Director, MCA, in which the para wise replies of the Petitioner Company to his observations have been duly examined, and the relevant provisions contained in the Companies Act, 2013 and other related Acts and Rules. In his report, the Regional Director, MCA has concluded that the Scheme appears to be fair, reasonable and not detrimental against the Members or Creditors or contrary to public policy and the same can be approved. The Scheme aims to simplify the management structure leading to better administration and reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business processes, etc. On a consideration of the facts of the case as mentioned in the preceding paragraphs, which are not elaborated here again to avoid duplication and repetition, we are satisfied that the procedure specified in sub-sections (1) and (2) of section 232 of the Companies Act, 2013 has been complied with, and hence the Scheme of Amalgamation, as approved by the Board of the Transferor Company 3, can be sanctioned, as prayed, and in view whereof, this Tribunal passes the following Order:

- (1) *The Scheme of Amalgamation, as contained in the present Petition, is sanctioned and the Appointed Date is 01<sup>st</sup> April, 2019; and*
- (2) *Sanctioning the Scheme of Amalgamation should not be construed as an order in any way granting exemption from payment of Stamp*

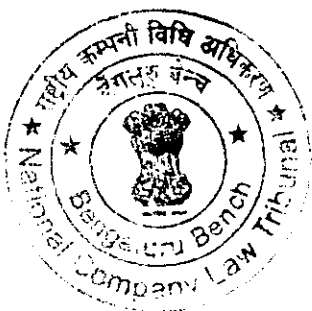


*Duty, taxes or other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specially required under any law, and the same shall be dealt with by the respective Authority in accordance with the extant Laws and Rules governing such Duty, taxes or other charges, as applicable; and*

- (3) The Transferor Company 3 be transferred without further act or deed to the Transferee Company and accordingly, the same shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Transferor therein, but subject nevertheless, to all the charges now affecting the same; and*
- (4) All the liabilities including taxes and charges, if any, and duties of the Transferor Company 3 be transferred without further act or deed to the Transferee Company and accordingly the same shall, pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and*
- (5) The tax implications, if any, arising out of the Scheme and merger of a loss making company with a profit making company, as also related party transactions, are subject to examination and final decision of Concerned Income Tax Authorities and the decision of the Concerned Tax Authorities shall be binding on the Transferee Company; and*
- (6) Any transaction that attracts the provisions of FEMA or RBI Guidelines, shall be strictly adhered to and any liability arising thereunder shall be the liability of the Transferee Company; and*



- (7) All the proceedings now pending by or against the Transferor Company 3 be continued by or against the Transferee Company, if any; and
- (8) Any liability, arising from non-compliance to the provisions contained in section 135, shall stand transferred to and be the liability of the Transferee Company, if any; and
- (9) The Petitioner Company shall within (30) Thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of Scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with the applicable rules and regulations; and
- (10) The acceptance of the Scheme is subject to compliance of the directions that the Petitioner Company shall file all the due Statutory Returns immediately, if any; and
- (11) The Petitioner Company will ensure compliance of all provisions of Companies Act, 2013, as may be applicable, and their Affidavit and will submit Quarterly/Annual Status of compliances through an Affidavit by Managing Director/Director of the Company along with CA/ICWA/CS Certificate till the compliance is ensured;
- (12) Petitioner Company or its Authorized Signatories are directed that after the completion of the process of amalgamation to handover the possession of the Books of Accounts and other relevant documents of the Petitioner Company to the Transferee Company for the purpose of section 239 of the Companies Act, 2013;
- (13) This Order is limited to the Scheme of Amalgamation, and it will not come in the way of Registrar of Companies or any other authority



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*to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the Company or any of its personnel prior or after the approval of the Scheme;*

*(14) If any of the Companies party to this Scheme contravene any of the provisions of section 232, they shall be liable to be punished with fine as contemplated in section 232(8) of the Act;*

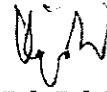
*(15) This order is subject to the order passed by the Hon'ble NCLT, Mumbai Bench in respect of Transferor Company 1, Transferor Company 2 and Transferee Company for the Scheme of Amalgamation, as the registered offices of the said Companies are situated in the State of Maharashtra.*

*(16) Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.*

*(17) C.P. (CAA) No.02/BB/2020 stands disposed of. All I.As pending, if any, also stand disposed of.*

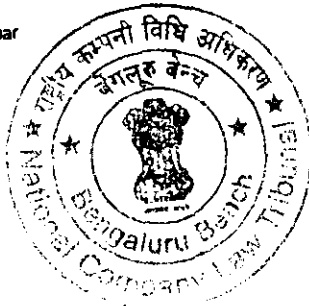


**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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*Majid*  
Deputy Registrar  
National Company Law Tribunal  
Bengaluru Bench

*Rajeswara Rao*

*9/6/2020*