

NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

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3267  
07/11/2019

CP(CAA) No. 107 of 2019 in  
CA(CAA) No. 86/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.10.2019

Name of the Company: HLE Engineers Pvt Ltd  
Swiss Glascoat Equipments Ltd  
Yashashvi Agrochemical Pvt Ltd

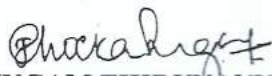
Section of the Companies Act : Section 230-232 of the Companies Act, 2013

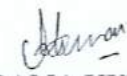
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	SWATI SEPARKAR	ADVOCATE	Petitioners	Swati Separkar
2.				

ORDER

The petitioner is represented through learned counsel.

The Order is pronounced in the open court, vide separate sheet.

  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

  
MANORAMA KUMARI  
MEMBER JUDICIAL

Dated this the 24th day of October, 2019



Copy to be filed

NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

CP (CAA) NO. 107/NCLT/AHM/2019  
in  
CA(CAA) No. 86/NCLT/AHM/2019

In the matter of:

**HLE Engineers Private Limited**

(CIN: U29100GJ1980PTC003739)

A company registered under the Provisions  
of Companies Act, 1956 and  
having its registered office at  
Survey No. 60/1,  
Ground Floor, Plot - 1 & 2,  
Near Shukan Bungalow,  
Opp. Maheshvari Bhavan,  
City Light Area,  
Surat - 395 001  
Gujarat

...Petitioner Demerged/Transferee Company

**Swiss Glascoat Equipments Limited**

(CIN: L26100GJ1991PLC016173)

A company registered under the Provisions  
of Companies Act, 1956 and  
having its registered office at  
H-106, G.I.D.C. Estate,  
Vitthal,  
Udyognagar - 388 121  
Gujarat

...Petitioner Resulting Company

**Yashashvi Agrochemical Private Limited**

(CIN: U01110GJ2016PTC093104)

A company registered under the Provisions  
of Companies Act, 2013 and  
having its registered office at  
Ground Floor, Plot - 1 & 2,  
SY No. 60/1, Paiky TPS - 4, FP - 39,  
Maheshvari Bhavan,  
City Light,  
Surat - 395 001  
Gujarat

...Petitioner Transferor Company

Order delivered on 24<sup>th</sup> October, 2019

Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)



*Chockalingam*

*Manorama*

**Appearance:** Advocate Ms. Swati Soparkar is present for the Applicant Companies

**ORDER**

**[ Per se: Ms. Manorama Kumari, Member (J)**

1. The instant joint petition is filed by the Petitioner Companies under Section 230 and 232 and other applicable provisions of the Companies Act, 2013 seeking sanction of this Tribunal to a Composite Scheme of Arrangement involving Demerger and transfer of the Operating Business of HLE Engineers Private Limited (Petitioner Demerged Company/Transferee Company) to Swiss Glascoat Equipments Limited (Petitioner Resulting Company) and Amalgamation of Yashashvi Agrochemical Private Limited (Petitioner Transferor Company) with HLE Engineers Private Limited (Petitioner Demerged Company/Transferee Company).
2. The Board of Directors of all the Petitioner Companies envisage the Scheme to be beneficial to all the shareholders, creditors and other stakeholders of the Petitioner Companies. The rationale for the Scheme and envisaged benefits are stated to be as under:
  - i. The Demerger of the Operating Business of the Petitioner Demerged Company and vesting of the same in the Petitioner Resulting Company and amalgamation of the Petitioner Transferor Company with the Petitioner Demerged Company/Transferee Company will enhance efficiencies and combine similar business interest into one corporate entity, resulting in operational synergies, simplification, focused management, streamlining and optimization of the business.
  - ii. The transfer and vesting of the Demerged Undertaking of the Petitioner Demerged Company into the Petitioner Resulting Company, by way of demerger, would facilitate focused management attention, administrative efficiency, organisational efficiency and optimum utilization of various resources being in the similar line of business, provide leadership vision, provide greater leveraging capability due to financial independence and facilitate strategic and/ or financial investment.
  - iii. The transfer of the Operating Business by the Petitioner Demerged Company and the amalgamation of the Petitioner Transferor Company



*Swati Soparkar*

*Manorama Kumari*

with the Petitioner Demerged Company/Transferee Company will enable the Petitioner Demerged Company/Transferee Company to enhance shareholder value accruing from consolidation of the business operations, economies of scale, improved allocation of capital, operational efficiency, integration of processes and optimized cash flows, thus contributing to the overall growth prospects of the Petitioner Demerged Company/Transferee Company.

- iv. The Scheme is expected to enable pooling of resources of the Petitioner Transferor Company, Petitioner Demerged Company/Transferee Company and the Petitioner Resulting Company and thus results into more productive utilization of the resources and reduction of costs, which would be beneficial to all the stakeholders.
  - v. The Scheme is in the interest of all the Petitioner Companies, their respective shareholders, creditors and employees.
3. The requisite report confirming the proposed Share Entitlement Ratio of Equity Shares, being just and reasonable as provided by M/s. M/s. R. U. Kamath & Company, Chartered Accountants is annexed with the petition and marked as **Annexure XX**. The Fairness opinion for the proposed Share Entitlement Ratio, in relation to Part II of the Scheme, as issued by Vivro Financial Services Private Limited, Category I Merchant Banker is annexed with the petition and is marked as **Annexure XX**. The Statutory Auditors of the Petitioner Demerged/Transferee Company and the Petitioner Resulting Company have confirmed the compliance of applicable accounting standards for the accounting treatment proposed under the Scheme and annexed with the petition as **Annexure XX**.
  4. The Petitioner Resulting Company, being a listed public limited company, the approval to the Scheme was first obtained from the Audit Committee of the Petitioner Resulting Company on 16th January, 2019 and thereafter the same was placed before the respective Board of Directors of all the Petitioner Companies. The resolutions dated 16th January, 2019 were passed by the Board of Directors of all the Petitioner Companies. The Scheme was thereafter presented to concerned stock exchange and the observation letter dated 27th May, 2019 was obtained from BSE Limited, where the shares of the Petitioner Resulting Company are listed. Copy of the Observation Letter dated 27th May, 2019 received from BSE Limited is placed on record and has been circulated to all the shareholders of the



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Petitioner Resulting Company along with the notice of the meeting convened for approval of the Scheme.

5. The Petitioner Companies filed the proceedings before this Tribunal in the form of joint application being CA (CAA) No. 86 of 2019 seeking directions from this Tribunal for convening and holding separate meetings of Secured Creditors and Unsecured Creditors of the Petitioner Demerged/Transferee Company and Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Resulting Company. Dispensation of the meetings of the Equity Shareholders of Petitioner Demerged Company/Transferee Company and Petitioner Transferor Company was sought, as all the Equity Shareholders of both the Petitioner Companies submitted the consent affidavits approving the proposed Scheme. Dispensation of the meeting of the Unsecured Creditors of Petitioner Transferor Company was sought, as there was only one Unsecured Creditor and who submitted the consent affidavit approving the proposed Scheme. There being no Secured Creditors of Petitioner Transferor Company, this Tribunal was of the view that there was no requirement to convene and hold the meeting of Secured Creditors of the Petitioner Transferor Company. Therefore, vide order dated 5th July, 2019, passed in CA (CAA) No. 86 of 2019, the meetings of the Equity Shareholders of Petitioner Demerged Company/Transferee Company and Petitioner Transferor Company and the meeting of Unsecured Creditors of Petitioner Transferor Company were dispensed with, whereas, directions were issued for convening and holding of separate meetings of the Secured Creditors and Unsecured Creditors of Petitioner Demerged Company/Transferee Company. Directions were also issued for convening and holding of separate meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Resulting Company to obtain the approval to the proposed Scheme. Further directions were also issued by this Tribunal for the service of notice upon the statutory authorities viz. Central Government through the Regional Director, North Western Region, the Registrar of Companies, Gujarat and the Income Tax Authorities in respect of all the Petitioner Companies and to Reserve Bank of India, BSE Limited and the Securities and Exchange Board of India in respect of Petitioner Resulting Company as well as publication of the notice of aforesaid meetings in the newspapers viz. "Times of India" English daily Ahmedabad edition having circulation both in Surat and Anand and



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Gujarati translation thereof in Gujarati daily "Sandesh" Surat Edition in respect of Petitioner Demerged Company/Transferee Company and "Sandesh Vadodara Edition in respect of the Petitioner Resulting Company. It is submitted that Petitioner Companies complied with the aforesaid directions.

6. Pursuant to the directions of this Tribunal, notices of the meetings were sent individually to all the Secured Creditors and Unsecured Creditors of the Petitioner Demerged Company/Transferee Company as well as to all the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Resulting Company on or before 23<sup>rd</sup> July, 2019; together with a copy of the Scheme of Arrangement, the Explanatory Statement and other disclosures. The notice convening the aforesaid meetings were also published in Ahmedabad edition of English daily 'Times of India' and Surat and Vadodara editions of Gujarati daily 'Sandesh' on 23<sup>rd</sup> July, 2019. The affidavits dated 31<sup>st</sup> July, 2019 were filed by the Chairman of the aforesaid meetings confirming the compliance of the directions of this Tribunal contained in its order dated 5<sup>th</sup> July, 2019.
7. The separate meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of Petitioner Resulting Company were duly convened and held at the registered office of the Petitioner Resulting Company at Vitthal Udyognagar on 23<sup>rd</sup> August, 2019 and the Chairman appointed for the aforesaid meetings reported the result of the aforesaid meetings to this Tribunal vide his affidavit dated 24<sup>th</sup> August 2019.

Perusal of the Chairman's report confirms the unanimous approval of the Scheme by the Equity Shareholders, who exercised their right to vote through different modes made available to them viz. remote e voting and voting by physical ballots at the meeting. The Scheme was approved unanimously by the Secured Creditors as well as Unsecured Creditors of the Petitioner Resulting Company at the respective meetings.

8. The separate meetings of the Secured Creditors and Unsecured Creditors of the Petitioner Demerged Company/Transferee Company were duly convened and held at the registered office of the Petitioner Demerged Company/Transferee Company at Surat on 24<sup>th</sup> August, 2019 and the Chairman appointed for the aforesaid meetings reported the result of the



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aforesaid meetings to this Tribunal vide his affidavit dated 24<sup>th</sup> August, 2019.

Perusal of the Chairman's report confirms the unanimous approval of the Scheme by the Secured Creditors as well as Unsecured Creditors of the Petitioner Demerged Company/Transferee Company at the respective meetings.

9. Vide the aforesaid order dated 5<sup>th</sup> July, 2019 of this Tribunal, the Petitioner Companies were also directed to serve Notice of the Scheme to the statutory authorities viz. (i) Central Govt. through the Regional Director, North-Western Region, (ii) Registrar of Companies, Gujarat, (iii) concerned Income Tax Authorities; and upon (iv) The Reserve Bank of India (v) BSE Limited; and (vi) Securities and Exchange Board of India only in case of the Petitioner Resulting Company, and upon the Official Liquidator for the Petitioner Transferor Company; along with Notice, Explanatory Statement and other documents and disclosures. The notices were duly served on all the aforesaid statutory authorities on or before 24<sup>th</sup> July, 2019. The affidavits dated 30<sup>th</sup> July, 2019 confirming the compliance of the aforesaid directions of this Tribunal for service of Notice upon all the aforesaid statutory authorities along with the acknowledgments for the same were filed with this Tribunal. In response to the said notice, the Regional director filed a common representation with this Tribunal dated 6<sup>th</sup> September, 2019. The Official Liquidator also filed a representation for the Petitioner Transferor Company dated 8<sup>th</sup> August, 2019. No Representations were received from the Income Tax Authorities or any other statutory authority for any of the Petitioner Companies.
10. The instant joint petition was filed on 5<sup>th</sup> September, 2019 and was admitted on 16<sup>th</sup> September, 2019. The date of hearing was fixed as 15<sup>th</sup> October, 2019. Directions were issued by this Tribunal to publish Notice of Hearing of Petition in the newspapers viz. Ahmedabad Edition of English daily, 'Times of India' and Surat and Vadodara editions of Gujarati daily, 'Sandesh' in respect of all the Petitioner Companies, at least 10 days before the date of hearing of the petition. Further directions were also issued by this Tribunal to serve notice of hearing of the petition to the aforesaid statutory authorities, viz. (i) Central Govt. through Regional

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Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities, and (iv) Official Liquidator at least 10 days before the date of hearing of the petition.

11. Pursuant to the directions of this Tribunal, notices were duly served by the Petitioner Companies on the aforesaid statutory authorities viz. (i) Central Govt. through Regional Director- North Western Region, (ii) Registrar of Companies, (iii) Income Tax authorities, and (iv) Official Liquidator on or before 27<sup>th</sup> September, 2019 and publication of the notice of hearing of the petition was duly made in the newspapers on 24<sup>th</sup> September, 2019. The affidavit dated 30<sup>th</sup> September, 2019 of service of notice of hearing of the petition upon the aforesaid statutory authorities and the publication of the notice of hearing of the petition confirming the compliances of the directions of this Tribunal contained in its order dated 16<sup>th</sup> September, 2019 and is placed on record.
12. The Petitioner Companies have filed a common additional affidavit dated 30<sup>th</sup> September, 2019 in response to the representations filed by the Regional Director and the Official Liquidator.
  - i. It is submitted that Para 2 (a), (b) and (f), of the affidavit by the Regional Director confirm the nature of proposal, consideration as confirmed by the Chartered Accountant as well as Rationale of the proposed arrangement.
  - ii. Para 2(c), of the affidavit of the Regional Director refers to the proposed consolidation of the Authorised Share Capital of the Petitioner Transferor Company with that of the Petitioner Demerged Company/Transferee Company as envisaged under Clause 40 (b) of the Scheme. It is observed by the Regional Director that under Section 232 (3) (i) of the Companies Act, 2013, the Petitioner Demerged Company/ Transferee Company shall get the set off only for the amount of fees paid by the Petitioner Transferor Company. In view of the same, the Petitioner Demerged Company/Transferee Company will be required to pay the difference of amount of fees payable on the enhanced Authorised Capital as on date and the actual amount of fees paid by the Petitioner Transferor Company at the relevant point of time. In this regard, it is undertaken by the Petitioner Demerged Company/Transferee Company to pay such



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difference, if any applicable, for the amount of fees payable as on date on the proposed enhancement of Authorised Capital of Rs. 20,00,000/-.

- iii. The Regional Director vide Para 2(d) refers to the proposed transfer of part of the Authorised Share Capital of the Petitioner Demerged Company/Transferee Company to the Petitioner Resulting Company, as envisaged under Clause 40 (a) and 41 of the proposed Scheme and the consequent amendment in the Capital Clause of Memorandum of Association of the Petitioner Demerged Company/Transferee Company and the Petitioner Resulting Company. It is observed by the Regional Director that such transfer and consolidation of the Authorised Capital is permissible under the provisions of law only for the proposed Scheme of Amalgamation and mergers and not for the Scheme of Arrangement involving Demerger. In this regard, it is submitted by the petitioners that there is no specific provision of law prohibiting such transfer and consolidation of capital in case of De-merger. Further, there are numerous instances where such transfer of part of the Authorised Capital has been permitted in case of De-merger by several decisions of the High Courts as well as NCLT. In light of such precedents available, there is no reason not to grant the same in the present Scheme.
- iv. Vide Para 2 (e) of the affidavit, it is observed by the Regional Director that the Authorised Share Capital of the Petitioner Resulting Company is insufficient to issue the shares to the shareholders of the Petitioner Demerged Company/Transferee Company, as per the exchange ratio envisaged in the Scheme. In this regard, it is hereby further clarified that on transfer of part of the Authorised Share Capital of the Petitioner Demerged Company/Transferee Company to the Petitioner Resulting Company and the reclassification of the Authorised Share Capital as envisaged under the Scheme, the Authorised Share Capital of the Petitioner Resulting Company shall be sufficient for such issue of new Equity and Preference shares as envisaged in the Scheme and it will not be necessary for the Petitioner Resulting Company to increase its Authorised Share Capital.
- v. Vide para 2 (g) of the affidavit, it is observed by the Regional Director that part of the share capital is held by the Non Resident Indians/Foreign National/ Foreign Body Corporate in case of the Petitioner Resulting

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Company. The Regional Director has sought confirmation about the compliance of provisions of FEMA and RBI guidelines. In this regard, it is confirmed that the Petitioner Resulting Company has so far made the compliance of all applicable provisions of FEMA and RBI guidelines. The notice under Section 230 (5) of the Companies Act, 2013 has been served upon the RBI and it has not made any representation so far and accordingly, it can be assumed that the RBI has no objection to the proposed Scheme.

- vi. Vide para 2 (h) of the affidavit, the Regional Director refers to Clause 19 (v) of the Scheme which deals with the cancellation of the shares of the Petitioner Resulting Company that are held by the Petitioner Demerged Company/Transferee Company and forms part of the Demerged Undertaking. The Scheme envisages the said reduction of Capital of the Petitioner Resulting Company, as an integral part of the Scheme and includes reference to Section 66 of the Act. It is clearly stated in the said clause that in view of the new shares proposed to be issued to the shareholders of the Petitioner Demerged Company/Transferee Company, there is no net reduction of the Share Capital of the Petitioner Resulting Company. It is submitted that the Petitioner Resulting Company is a listed public limited company and the proposals under the Scheme has been verified by SEBI before granting the prior approval to the Scheme vide observation letter dated 27th May 2019 issued by BSE Limited. The aforesaid observation letter has been placed on record.
- vii. Vide para 2 (i) of the affidavit, it is observed by the Regional Director that the Petitioner Resulting Company, being a listed company shall be required to comply with SEBI circulars in general and SEBI Circular No. CFD/DIL/3/CIR/2017/21 dated 10th March 2017, in particular. It is stated that the Petitioner Resulting Company has complied with the applicable provisions of the said circulars, has already obtained required prior approval from the concerned stock exchange and SEBI and has further complied with the directions contained in the observation letter. Copy of the said observation letter dated 27th May 2019 has been placed on record with the first motion Application as well as Second Motion Petition. It is further confirmed that a copy of the said letter was sent to all the Equity Shareholders of the Petitioner Resulting Company along with the notice of the meeting and other required documents. It is further



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undertaken by the Petitioner Resulting Company to adhere to the compliances upon Scheme being effective.

- viii. Vide para 2 (j) of the affidavit, it is observed by the Regional Director that directions be issued for compliance of Section 2 (19 AA) of the Income Tax Act, since the Scheme involves Demerger. In this regard, it is pointed out that clause 1 of the Preamble of the Scheme clearly provides for the same and no further directions are necessary to be issued in this regard.
- ix. Vide para 2 (k) of the affidavit, it is observed and confirmed by the Regional Director that the Object Clause of the Petitioner Resulting Company shall be amended, as envisaged under Clause 43 of the Scheme, under the principle of Single Window Clearance. It is pointed out no further procedural compliance under Section 13 of the Companies Act, 2013 shall be necessary for the same. Upon the sanction of the Scheme as a whole, the said proposal shall stand granted.
- x. Vide para 2 (l) of the affidavit, it is observed by the Regional Director that the Name Clause of the Petitioner Resulting Company is proposed to be changed to HLE Glascoat Limited, as envisaged vide Clause 42 of the Scheme, under the accepted principle of Single Window Clearance. It is clarified that no further procedural compliance under Section 13 of the Companies Act, 2013 shall be necessary for the same. Upon the sanction of the Scheme as a whole, the said proposal shall stand granted. The Petitioner Resulting Company has already confirmed the availability of Name with the Office of Registrar of Companies, by following due procedure and a copy of the said confirmation letter dated 13th September, 2019 is placed on record.
- xi. Vide para 2 (m) of the affidavit, it is observed by the Regional Director that the Petitioner Demerged Company/Transferee Company is engaged in the power generation business and seeks a confirmation about the required licenses, approvals etc. for the said business. It is hereby respectfully submitted that the Petitioner Demerged Company/Transferee Company is engaged in generation of power through Wind mills and have obtained the required approvals. It is hereby further clarified that the same forms part of the Demerged Undertaking and is proposed to be transferred under the Scheme. In view of the same, the Petitioner Resulting Company

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undertaken by the Petitioner Resulting Company to adhere to the compliances upon Scheme being effective.

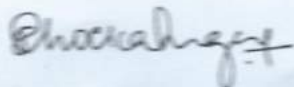
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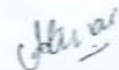
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Company and the Petitioner Resulting Company is in compliance with the applicable Accounting Standards notified by Central Govt. under section 133 of the Companies Act, 2013.

16. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that all the requirements of section 230 and 232 of the Companies Act, 2013 are satisfied and the Scheme deserves to be sanctioned.
17. As a result, the petition being CP (CAA) No. 107 of 2019 is hereby allowed. The Scheme which is at **Annexure- 'H'** to the petition is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies, their shareholders, secured creditors and unsecured creditors and all concerned under the Scheme.
18. The amount to be paid to the Office of the Regional Director towards legal costs and expenses is quantified at Rs. 37,500-. The said fees to the Regional Director shall be paid by the Petitioner Resulting Company. The amount to be paid to the Office of the Official Liquidator towards legal costs and expenses is quantified at Rs. 10,000/- The same shall be paid by the Petitioner Demerged Company/Transferee Company.
19. Filing and issuance of drawn up order is hereby 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 authenticated copy of this order along with Scheme immediately.
20. The Petitioner Companies are further directed to lodge a copy of this order, the schedule of immovable assets of the Demerged Undertaking of the Petitioner Demerged Company/Transferee Company and the Undertaking of the Transferor Company as on the date of this order and the Scheme duly authenticated by the Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, if any, on the same within 30 days from the date of the order.
21. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies,

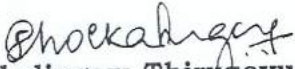


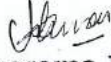


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electronically, along with for INC-28 in addition to physical copy as per relevant provisions of the Act.

22. CP (CAA) No. 107 of 2019 is disposed off accordingly.

  
Chockalingam Thirunavukkarasu  
Member (Technical)

  
Ms. Manorama Kumari  
Member (Judicial)

LCT

