

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

38. C.P.(CAA)/215/MB/2022

IN

C.A.(CAA)/193/MB/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **05.01.2023**

NAME OF THE PARTIES: All Cargo Logistics Limited

SECTION 230(I) OF COMPANIES ACT, 2013

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**ORDER**

Mr. Hemant Sethi, counsel for the Petitioner and Ms. Rupa Sutar, representative of Regional Director, are present through virtual hearing.

**C.P.(CAA)/215/MB/2022**

Heard both sides and the above Company Petition **is allowed. Detail order would follow:**

**Sd/-**  
MADHU SINHA  
Member (Technical)  
//SGP//

**Sd/-**  
H. V. SUBBA RAO  
Member (Judicial)

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BENCH, AT MUMBAI, COURT III

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In the matter of the Companies Act, 2013;

And

In the matter of Application under Sections 230 to 232 read with Sections 52 and 66 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016; and other relevant provisions of the Companies Act 2013;

And

In the matter of Scheme of Arrangement in respect of demerger of Allcargo Logistics Limited ("**Demerged Company**") into Allcargo Terminals Limited (formerly known as Allcargo Terminals Private Limited, this company was converted from

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private limited to public limited w.e.f. January 10,  
2022) (“**Resulting Company 1**”) and TransIndia  
Realty & Logistics Parks Limited (“**Resulting  
Company 2**”) and their respective shareholders.

Allcargo Logistics Limited CIN: )  
L63010MH2004PLC073508, having its )  
registered office at 6<sup>th</sup> Floor, Allcargo )  
House, CST Road, Kalina, Santacruz ) ... First Petitioner  
(East), Mumbai 400098, Maharashtra, ) Company/ Demerged  
India. ) Company

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Allcargo Terminals Limited (formerly )  
known as Allcargo Terminals Private )  
Limited, this company was converted )  
from private limited to public limited )  
w.e.f. January 10, 2022) CIN: )  
U60300MH2019PLC320697, having its )  
registered office at 4<sup>th</sup> Floor, A Wing, )  
Allcargo House CST Road, Kalina, San- ) Second Petitioner Com-  
tacruz East, Mumbai 400098, Maharash- ) pany/ Resulting Com-  
tra, India. ) pany 1

TransIndia Realty & Logistics Parks )  
Limited (CIN: )  
U61200MH2021PLC372756, having its )  
registered office at 4<sup>th</sup> Floor, A Wing, ) Third Petitioner Com-  
Allcargo House, CST Road, Kalina, San- ) pany/ Resulting Com-  
tacruz East, Mumbai 400098, ) pany 2

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Maharashtra, India. )

Order Delivered on: 05.01.2023

**Coram:**

**Hon'ble Shri H.V Subba Rao : Hon'ble Member (Judicial)**  
**Hon'ble Smt. Madhu Sinha : Hon'ble Member (Technical)**

**Appearances (by video-conferencing):**

**For the Petitioners** : Mr. Hemant Sethi, Ms. Devanshi Sethi,  
Ms. Tanaya Sethi, i/b Hemant Sethi &  
Co., Advocates for Petitioner Compa-  
nies

**For the Regional Director** : Ms. Rupa Sutar, Deputy Director, in  
the Office of Regional Director, MCA  
(WR), Mumbai.

**ORDER**

1. The court is convened via video conferencing today (05/01/2023).
2. Heard the learned Counsel for the Petitioners and the representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai. No objector has come before this Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.

3. The sanction of the Tribunal is sought under sections 230 to 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, to the Scheme of demerger of business of Container Freight Station (CFS), Inland Container Depot (ICD) on a going concern basis of Allcargo Logistics Limited ("First Petitioner Company"/"Demerged Company") into Allcargo Terminals Limited (formerly known as Allcargo Terminals Private Limited, this company was converted from private limited to public limited w.e.f. 10<sup>th</sup> January, 2022) ("Second Petitioner Company"/"Resulting Company 1") and demerger of construction & leasing of Logistics Parks, leasing of land & commercial properties, Engineering Solutions (hiring & Leasing of equipment's) of Demerged Company to TransIndia Realty & Logistics Parks Limited ("Third Petitioner Company"/"Resulting Company 2") and their respective Shareholders ("Scheme").
4. The Scheme envisages the following:
  - a) Demerger under the present Scheme is in accordance with Sections 230 to 232 and other applicable provisions of the Companies Act,

2013 (“Act”). Upon the coming into effect of this Scheme and in consideration of the demerger of the Demerged Undertaking 1 in the Resulting Company 1 pursuant to this Scheme, the Resulting Company 1 shall, without any further act or deed and without any further payment, issue and allot equity shares (hereinafter also referred to as the “New Equity Shares of Resulting Company 1”) at par on a proportionate basis to each member of the Demerged Company, whose name is recorded in the register of members of the Demerged Company as holding shares on the Record Date, in the ratio of 1 equity share of Rs 2 each fully paid up of Resulting Company 1 for every 1 equity share of Rs 2 each fully paid up held in the Demerged Company;

- b) Upon the coming into effect of this Scheme and in consideration of the demerger of the Demerged Undertaking 2 in the Resulting Company 2 pursuant to this Scheme, the Resulting Company 2 shall, without any further act or deed and without any further payment, issue and allot equity shares (hereinafter also referred to as the “New Equity Shares of Resulting Company 2”) at par on a proportionate basis to each member of the Demerged Company, whose name is recorded

in the register of members of the Demerged Company as holding shares on the Record Date, in the ratio of 1 equity share of Rs 2 each fully paid up of Resulting Company 2 for every 1 equity shares of Rs 2 each fully paid up held in the Demerged Company.

c) Cancellation of shares of the Resulting Companies:

- i) Simultaneous with the issuance and allotment of the equity shares by the Resulting Company 1 in accordance with Clause 13.1 of the Scheme, the initial issued and paid up equity share capital of the Resulting Company 1, comprising of 7 equity shares of Rs. 10 each, aggregating to Rs. 70 shall be cancelled.
- ii) Simultaneous with the issuance and allotment of the equity shares by the Resulting Company 2 in accordance with Clause 13.1 of the Scheme, the initial issued and paid up equity share capital of the Resulting Company 2, comprising of 7 equity shares of Rs. 10 each, aggregating to Rs. 70 shall be cancelled.

5. The Learned Counsel for the Petitioner Companies further submits that:



- a) the First Petitioner Company is a listed public limited company and is engaged inter-alia in the business of (i) Multimodal Transport Operations; (ii) Container Freight Stations/Inland Container Depots; (iii) Project and Engineering Solutions; (iv) Logistics Park; (v) Express Logistics business; (vi) Contract Logistics; and (vii) other related logistics businesses.
  - b) the Second Petitioner Company is an unlisted public limited company incorporated on 5<sup>th</sup> February, 2019 and is engaged *inter-alia* in the business of Container Freight Stations/Inland Container Depots and any other related logistics businesses.
  - c) the Third Petitioner Company is an unlisted public limited company incorporated on 3<sup>rd</sup> December, 2021 and is engaged *inter-alia* in the business of Engineering and equipment leasing and hiring solutions, Logistics Park, Warehousing, real estate development and leasing activities and other related businesses.
6. The Counsel for the Petitioner Companies submits that the Board of Directors of the First Petitioner Company, the Second Petitioner Company

and the Third Petitioner Company have approved the Scheme of Arrangement in their respective meetings held on 23<sup>rd</sup> December, 2021. The Appointed Date of Scheme is 1<sup>st</sup> April 2022.

7. The Counsel for the Petitioner Companies further submits that the shares of First Petitioner Company are listed on BSE Limited ("BSE") and National Stock Exchange of India Limited ("NSE"). Pursuant to the Securities Exchange Board of India ("SEBI") circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665 dated November 23, 2021, as amended from time to time ("SEBI Circular") read with Regulation 37 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), First Petitioner Company had applied to BSE and NSE for their "Observation Letter" / "No Objection Letter" to file the Scheme for sanction of the Tribunal. BSE vide its letter dated 24<sup>th</sup> March, 2022 and NSE by its letter dated 25<sup>th</sup> March, 2022, have respectively given their "Observation Letter" to the First Petitioner Company, to file the Scheme with the Tribunal.

8. The Petitioners submit that the Petition has been filed in consonance with the order dated 28<sup>th</sup> July, 2022, passed by this Hon'ble Tribunal in the connected Company Scheme Application bearing C.A.(CAA)/193/MB/2022.
9. The Learned Counsel for the Petitioner Companies states that the rationale for the Scheme is as follows:
- a) The Demerged Undertakings and the Remaining Business have both achieved scale and experience to sustain business based on their own strengths. Additionally, both businesses deal with different sets of industry dynamics in the form of nature of risks, competition, challenges, opportunities and business methods. Hence, segregation of the two undertakings would enable focused managements to explore the potential business opportunities more effectively and efficiently.
  - b) Demerger will enable both Demerged Company and the Resulting Companies to enhance business operations by streamlining operations, cutting costs, more efficient management control and outlining independent growth strategies.

- c) Each undertaking will be able to target and attract new investors with specific knowledge, expertise and risk appetite corresponding to their own businesses. Thus, each undertaking will have its own set of like-minded investors, thereby providing the necessary funding impetus to the long-term growth strategies of each business.
- d) Demerger will enhance efficiencies and will have different business interest into separate corporate entity, resulting in operational synergies, simplification, focused management, streamlining and optimization of the group structure and efficient administration.
- e) Pursuant to the Scheme, the equity shares issued by the Resulting Companies would be listed on BSE Limited and National Stock Exchange of India Limited and will unlock the value of the Demerged Undertakings for the shareholders of the Demerged Company. Further the existing shareholders of the Demerged Company would hold the shares of three (3) listed entities after the Scheme becoming effective; giving them flexibility in managing their investments in the three businesses having differential dynamics.

f) The Board of Directors of the Demerged Company and the Resulting Companies believe that the Scheme is in the best interests of the respective entities and their respective stakeholders including its shareholders.

10. The Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai has filed its Report dated 15<sup>th</sup> December 2022, inter alia stating therein the observations on the Scheme as stated in paragraph 2 (a) to (l) of the said Report. In response to the observations made by the Regional Director, the Petitioner Companies have filed reply affidavit cum rejoinder on 4<sup>th</sup> January 2023. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies are summarized in the table below:

<b>Sr. No. Para (2)</b>	<b>RD Report/Observations</b>	<b>Response of the Petitioner Companies</b>
a)	<i>That on examination of the report of the Registrar of Companies, Mumbai dated 11.11.2022 for Petitioner Companies (Annexed as Annexure A-1) that the Petitioner</i>	As regards the observation made in Paragraph 2(a) of the said Report is concerned, it is submitted that the Form AOC-4 XBRL for financial year ended March 31,

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	<p><i>Companies fall within the jurisdiction of ROC, Mumbai. It is submitted that no representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Companies. Further, the Petitioner Demerged Company has filed Financial Statements up to 31.03.2022, Resulting Company -1 has filed till 31.03.2021 &amp; Resulting Company -2 is incorporated on 03.12.2021. The ROC has further submitted that in his report dated 11.11.2022 which are as under:-</i></p>	<p>2022 for Resulting Company 1 and Resulting Company 2, have been filed on October 19, 2022 (SRN: F31482391) and November 02, 2022 (SRN: F39172622), respectively and no further response is required to that extent.</p>
	<p><i>1. That the ROC Mumbai in his report dated 11.11.2022 has stated that no Inquiry, investigation, inspection, prosecution, technical scrutiny, complaints are pending against the Petitioner companies.</i></p>	<p>As regards the observation made in Paragraph 2(a)(1) and 2(a)(2) of the said Report is concerned, it is submitted that the observations made by the ROC is merely factual in nature and no further response is required to that extent.</p>
	<p><i>2. BSE and NSE have given their no objection certificate vide their letter dated 24.03.2022.</i></p>	<p>As regards the observation made in Paragraph 2(a)(1) and 2(a)(2) of the said Report is concerned, it is submitted that the observations made by the ROC is merely</p>

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		factual in nature and no further response is required to that extent.
	<i>3. Interest of the Creditors should be protected.</i>	As regards the observation made in Paragraph 2(a)(3) of the said Report is concerned, The Petitioner Companies hereby undertake that the interest of the creditors shall be duly protected under the Scheme. There is no compromise or arrangement with creditors.
	<i>4. It is submitted that as per the provisions of Section 232(3)(i) of the Companies Act, 2013, where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the Transferee company on its authorized capital subsequent to the amalgamation. Therefore, remaining fee, if any after setting-off the fees already paid by the transferor company on its authorized capital, must be paid by the transferee company on the increased authorized capital subsequent to the amalgamation.</i>	As regards the observation made in Paragraph 2(a)(4) of the said Report is concerned, the Petitioner Companies clarify that the present Scheme is the Scheme of Arrangement involving demerger and not amalgamation. The Petitioner Companies are not seeking any set-off of fees on increase of capital subsequent to the sanctioning of the Scheme.

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	<p>5. <i>Form GNL-1 has not been filed by Resulting Company 1&amp;2.</i></p> <p><i>Hence, the Petitioner Companies shall undertake to submit detail reply against observations mentioned above.</i></p>	<p>As regards the observation made in Paragraph 2(a)(5) of the said Report is concerned, Form GNL-1 has been filed on November 18, 2022 for Resulting Company 1 (SRN F45239100) and Resulting Company 2 (SRN F45230976) respectively.</p>
c)	<p><i>Transferee Company should undertake to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of fees payable by Transferee Company for increase of share capital on account of merger of transfer of companies.</i></p>	<p>As regards the observation made in Paragraph 2(c) of the said Report is concerned, the Petitioner Companies clarify that the present Scheme is the Scheme of Arrangement involving demerger and not amalgamation. The Petitioner Companies are not seeking any set-off of fees on increase of capital subsequent to the sanctioning of the Scheme.</p>
d)	<p><i>In compliance of Accounting Standard -14 or IND AS-103, as may be applicable, the Resultant Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 (IND AS-8) etc.;</i></p>	<p>As regards the observation made in Paragraph 2(d) of the said Report is concerned, it is submitted that in addition to compliance with IND AS-103 (AS-14 not applicable), in connection with the Scheme, the Petitioner Companies shall pass such accounting entries which are necessary to comply with all other applicable Accounting Standards such as IND AS-8 etc. to the extent applicable.</p>



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e)	<i>The Hon'ble Tribunal may direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there in no discrepancy, or no change is made.</i>	As regards the observation made in Paragraph 2(e) of the said Report is concerned, the Petitioner Companies submit and confirm that the Scheme enclosed in the Company Application and Company Petition are one and the same and there is no discrepancy, or no change is made.
f)	<i>The Petitioner Companies under the provisions of Section 230(5) of the Companies Act, 2013 have served notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the Scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the Scheme. The decision of such authorities shall be binding on the Petitioner companies concerned.</i>	As regards the observation made in Paragraph 2(f) of the said Report is concerned, the Petitioner Companies submit that notices have been duly served upon all the concerned authorities viz., the concerned Income Tax Authorities, the office of Regional Director, Registrar of Companies, concerned GST Authorities, National Stock Exchange of India Limited, BSE Limited and the Securities Exchange Board of India. Further the compliance affidavit proving the dispatch of the notices has been filed with this Tribunal.
g)	<i>As per Definitions of the Scheme, "Appointed Date" means 1st April 2022;</i>	As regards the observation made in Paragraph 2(g) of this Report is concerned, the

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<p><b>“Effective Date”</b> means the date on which all the conditions and matters in relation to the scheme referred in clause 19 of the scheme have been fulfilled;</p> <p><b>“Record Date 1”</b> shall means in relation to demerger of Business Division 1 of Demerged Company into Resulting Company-1, such date to be fixed by the Board of directors of Demerged Company or a committee there of/ person duly authorised by board of directors after the effective date for the purpose of determining the members of Demerged Company to whom shares of Resulting Company - 1 will be allotted pursuant to this scheme in terms of clause 13.1.</p> <p><b>“Record Date 2”</b> shall means in relation to demerger of Business Division 2 of Demerged Company into Resulting Company - 2, such date to be fixed by the Board of directors of Demerged</p>	<p>Petitioner Companies confirm that the Appointed Date is April 1, 2022 as mentioned in the Scheme which is in compliance with Section 232(6) of the Companies Act, 2013 and the Scheme shall take effect from such Appointed Date. The Petitioner Companies undertake to comply with the requirements clarified vide circular No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>
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	<p><i>Company or a committee thereof/person duly authorised by board of directors after the effective date for the purpose of deterring the members of Demerged Company to whom shares of Resulting Company - 2 will be allotted pursuant to this scheme in terms of clause 13.1.</i></p> <p><i>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No.7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</i></p>	
<p><i>h)</i></p>	<p><i>Petitioner Companies shall undertake to comply with the directions of the concerned sectoral Regulatory, if so required.</i></p>	<p>As regards the observation made in Paragraph 2(h) of this Report is concerned, it is submitted that the Petitioner Companies hereby undertake to ensure compliance of all directions of the concerned sectoral regulators. Further, the approval of the Scheme by this Tribunal may not deter the sectoral regulators to deal with any issues arising after giving effect to the Scheme</p>

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		and all issues arising out of the Scheme shall be met and answered in accordance with law.
i)	<i>Petitioner Companies shall undertake to comply with the directions of Income tax Department, if any.</i>	As regards the observation made in Paragraph 2(i) of this Report is concerned, it is submitted that in pursuance of section 230(5) of the Companies Act, 2013, notices have been given to the concerned income tax department and no representation has been received. It is further submitted that the Petitioner Companies undertake to ensure compliance of all the provisions of the Income tax Act and Rules pursuant to the Scheme. Further, the approval of the Scheme by this Tribunal may not deter Income-tax authorities to deal with Income-tax related issues arising after giving effect to the Scheme and the Petitioner Companies submit that any Income-tax related issues arising out of the Scheme will be met and answered during the course of regular Income-tax assessment in accordance with the provisions of the Income-tax Act, 1961.

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<p>j)</p>	<p><i>Petitioner Companies shall undertake to comply with the guidelines of RBI, FEMA and FERA as Petitioner Companies has foreign shareholders.</i></p>	<p>As regards the observation made in Paragraph 2(j) of this Report is concerned, it is submitted that the Petitioner Companies hereby undertake to ensure compliance with the Rules &amp; regulations of FEMA (FERA) &amp; RBI guidelines if applicable. However, in the instance case the issue and allotment of shares is through automatic route and therefore no permission is required. The Resulting Company shall file form FC-GPR in compliance with RBI regulations post sanctioning of the scheme and allotment of shares.</p>
<p>k)</p>	<p><i>Petitioner Demerged Company is Listed with NSE and BSE and NSE &amp; BSE have given their observations vide their letter dated 24.03.2022, further the demerged company shall undertake to comply with SEBI Regulations.</i></p>	<p>As regards the observation made in Paragraph 2(k) of this Report is concerned, the Petitioner Companies confirm that BSE &amp; NSE have given their observations vide letter dated 24.03.2022 and 25.03.2022, respectively and that the Demerged Company shall undertake to comply with SEBI Regulations, to the extent applicable.</p>
<p>l)</p>	<p><i>The Demerged Company may be asked to give statement of assets and liabilities to be transferred to</i></p>	<p>As regards the observation made in Paragraph 2(l) of this Report is concerned the Demerged Company has filed affidavit in</p>

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	<i>Resulting Company No. 1 &amp; 2 along with book value and estimated value as the Petitioner have not given value of assets and liabilities to be transferred to Resulting Companies at page no. 536 to 539 in respect of Annexure A &amp; B of the Scheme and Petitioner Companies shall undertake to service debts/creditors as on the appointed date to protect the interest of creditors.</i>	rejoinder and given particulars of statement of assets and liabilities.
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11. The Observations made by the Regional Director have been explained and the clarifications and undertakings given by the Petitioner Companies have been explained in above table. The Ld. Authorized representative for the Regional Director Ms. Rupa Sutar appeared in person and reported that most of the observations made by the Regional Director are routine in nature, and the Regional Director has no serious objection for approving the above Scheme. The clarifications and undertakings given by the

Petitioner Companies in response to the said Report are accepted by this Tribunal.

12. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition bearing C.P.(CAA)/215/MB /2022 filed by the Petitioner Companies is made absolute in terms of prayers clause of the said Company Scheme Petition.
14. The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with e-Form INC-28, within 30 (thirty) days from the date of receipt of order, duly certified by the Designated Registrar of this Tribunal.
15. The Petitioner Companies to lodge a certified copy of this order and the Scheme duly certified by the Designated Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication

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of stamp duty payable, if any, on the same within 60 (sixty) days from the date of receipt of certified copy of the order.

16. All concerned regulatory authorities to act on a copy of this Order duly certified by the designated Registry of this Tribunal, along with a copy of the Scheme.
17. The Scheme of Arrangement of Demerger is hereby sanctioned.
18. Ordered accordingly. Pronounced in open court today.

Sd/-

**Madhu Sinha**  
**(Member Technical)**

Sd/-

**H.V. Subba Rao**  
**(Member Judicial)**