

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CA (CAA)/37/MB-IV/2021

In the matter

Of

The Companies Act, 2013

AND

In the matter

Of

*In the matter of Section 230-232 and other applicable
provisions of the Companies Act, 2013 and the rules
made thereunder*

AND

In the matter

Of

The Scheme of Merger

Of

*Patel Energy Resources
("First Transferor Company)*

*PEL Power Limited
("Second Transferor Company)*

*PEL Port Private Limited
("Third Transferor Company)*

*Patel Energy Projects Limited
("Fourth Transferor Company)*

*Patel Energy Assignment Private Limited
("Fifth Transferor Company)*

*Patel Energy Operations Private Limited
("Sixth Transferor Company)*

Jayshe Gas Power Private Limited
(“Seventh Transferor Company”)

Patel Thermal Energy Private Limited
(“Eighth Transferor Company”)

Patel Hydro Power Private Limited
(“Ninth Transferor Company”)

Zeus Minerals Trading Private Limited
(“Tenth Transferor Company”)

Patel Concrete & Quarries Private Limited
(“Eleventh Transferor Company”)

Patel Lands Limited
(“Twelfth Transferor Company”)

Patel Engineers Private Limited
(“Thirteenth Transferor Company”)

Phedra Projects Private Limited
(“Fourteenth Transferor Company”)

Patel Engineering Limited
(“Transferee Company”)

*The Transferor Company No. 1 to 8 are registered within the Jurisdiction of
NCLT Hyderabad.*

Patel Hydro Power Private Limited First Applicant Company/
[CIN: U40108MH2010PTC326949] Transferor Company

Zeus Minerals Trading Private Limited Second Applicant Company/
[CIN: U51909MH2007PTC167522] Transferor Company

Patel Concrete & Quarries Private Limited Third Applicant Company/
[CIN: U14200MH2008PTC178210] Transferor Company

Patel Lands Limited Fourth Applicant Company/

[CIN: U70100MH2010PLC207028]	Transferor Company
Patel Engineers Private Limited Fifth Applicant Company/
[CIN: U70100MH2005PTC157559]	Transferor Company
Phedra Projects Private Limited Sixth Applicant Company/
[CIN: U45201MH2006PTC164317]	Transferor Company
Patel Engineering Limited Seventh Applicant Company/
[CIN: U24230MH1986PTC039809]	Transferee Company

Order delivered on: 15.11.2021

Coram:

Mr. Rajesh Sharma

Mrs. Suchitra Kanuparthi

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicants : Ms. Vidisha Poonja i/b
Mr. Hemant Sethi, Advocates.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This Bench is convened through video conferencing today.
2. The Counsel for the Applicant Companies states that the present Scheme of Merger by Absorption of wholly owned subsidiaries namely, Patel Energy Resources Limited('First Transferor Company') and PEL Power Limited ('Second Transferor Company') and PEL Port Private Limited ('Third Transferor Company') and Patel Energy Projects Limited ('Fourth Transferor Company') and Patel Energy Assignment Private Limited ('Fifth Transferor Company') and Patel Energy Operations

Private Limited ('Sixth Transferor Company') and Jayshe Gas Power Private Limited ('Seventh Transferor Company') and Patel Thermal Energy Private Limited ('Eighth Transferor Company') and Patel Hydro Power Private Limited ('Ninth Transferor Company') and Zeus Minerals Trading Private Limited ('Tenth Transferor Company') and Patel Concrete & Quarries Private Limited ('Eleventh Transferor Company') and Patel Lands Limited ('Twelfth Transferor Company') and Patel Engineers Private Limited ('Thirteenth Transferor Company') and Phedra Projects Private Limited ('Fourteenth Transferor Company'), with its holding company namely Patel Engineering Limited ('Transferee Company') and their respective Shareholders ('the Scheme' or 'this Scheme'), under the provisions of Sections 230 to 232 of the Companies Act, 2013.

3. This is scheme of Merger of 14 Transferor Companies with the Patel Engineering Limited i.e. the Transferee Company. Out of the 14 Transferor Companies, from First Transferor Company to Eighth Transferor Company are having their respective Registered offices within the Jurisdiction of NCLT Hyderabad and accordingly filed similar Application with NCLT Hyderabad. The Ninth Transferor Company to Fourteenth Transferor Company and the Transferee Company are registered within the Jurisdiction of NCLT Mumbai, hence, filed this present Application before this Bench.
4. The Counsel for the Applicant Companies states that the Board of Directors of the Transferee Company has approved the merger in its meeting held on November 13, 2020. The Counsel further states that Board of Directors of the Transferor Companies in their respective meetings held on January 21, 2021 have approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2021.

5. The Counsel for the Applicant Companies further submits that the Transferor Companies are either directly or indirectly wholly owned subsidiaries of the Transferee Company and entire share capital of these Transferor Companies is owned and controlled by the Transferee Company.
6. The Counsel for the Applicants further submits the Introduction and Rationale for the Scheme of Amalgamation: -

Patel Hydro Power Private Limited

The main object of First Applicant Company is to carry on the business of procurers, generators, suppliers, distributors, transformers, converters, producers, manufacturers, processors, developers, storers, carriers, importers and exporters of and dealers in Hydro power / energy and allied businesses as well as electricity and any products or byproducts derived from such business.

Zeus Minerals Trading Private Limited

The main object of Second Applicant Company is to carry on the business of miners, importers & exporters of and dealers in iron ores, chromium ores, manganese ores and all ferrous and non ferrous ores of every description.

Patel Concrete & Quarries Private Limited

The main object of Third Applicant Company is to engage in carrying on in India and abroad the business of manufacturers, dealers, traders, distributors, contractors and stockist of construction materials of all types.

Patel Lands Limited

The main object of Fourth Applicant Company is to engage in the business of purchase, hold, take on lease, mortgage and / or acquire lands to design, erect construct commercial complexes or other buildings or conveniences in India or outside.

Patel Engineers Private Limited

The main object of Fifth Applicant Company is to engage in the business of purchase, acquire, hold, take on lease, licenses and deal in all kinds of immovable property including land, building, houses, farm houses, flats, shops, commercial premises, godowns, and any rights, privileges, interests therein and to develop, construct the same.

Phedra Projects Private Limited

The main object of Sixth Applicant Company is to engage in the business of infrastructure development activities such as build, develop, construct, alter, acquire, convert, improve, design, erect, establish, equip, dismantle, pull down, turn to account, decorate, repair, operate, maintain, reconstruct, renovate, remodel, rebuild, and to undertake turnkey project of building road, bridges, infrastructure, buildings, factories, structures, dams, railways, drainage, sewage works, water distribution & lifteration system, docks, flyovers, hospital, housing projects, power supply work, and other infrastructure related work either own or BOT (Built, Operate & transfer) or other basis, and to act as contractors, engineers, consultant, adviser in that connection.

Patel Engineering Limited

The Seventh Applicant Company is engaged in the business of Constructions Engineers and Contractors and to buy and sell land, buildings, estates and immovable property of any tenure or description.

Rationale of the Scheme:

The merger of the Transferor Companies with the Transferee Company would inter alia have the following benefits:

- The Transferor Companies are wholly-owned subsidiaries of the Transferee Company, so merger will help to consolidate the entities;
 - The merger of the Transferor Companies with the Transferee Company will combine business interest into one corporate entity, resulting in operational and management efficiency, simplification, streamlining and optimization of the group structure and efficient administration;
 - Post-merger of the Transferor Companies with the Transferee Company, the Transferor Companies shall stand dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs.
7. That the meeting of the Equity Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company be dispensed in support of Company Application, inter-alia stating therein that the said Applicant Companies having procured the written consent affidavits from all the Equity Shareholders which are annexed as Annexure – L2, M2, N2, O2, P2 and Q2 respectively to the Company Application. In view of the fact

that the shareholders of the said Applicant Companies have given their consent affidavits, the meeting of the Equity Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company is hereby dispensed with.

8. There are no Secured Creditor in the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company, therefore, convening meeting and issue of notices to them does not arise.
9. The Counsel for the Applicant Companies further submits that the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company have procured the written consent affidavits from the Unsecured Creditors constituting more than 90% in value of the said Applicant Companies which are annexed as Annexure – L4, M4, N4, O4, P4 and Q4 respectively to the Company Application. In view of the fact that Unsecured Creditors constituting over 90% in value of the Unsecured Creditors have given their consent to the proposed Scheme, the meeting of the Unsecured Creditors of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company for the purpose of considering and, if thought fit, approving the proposed Scheme with or without modification(s) is hereby dispensed with.

10. That the meeting of the 1 (One) Debenture Holder of the Sixth Applicant Company be dispensed in support of Company Application, inter-alia stating therein that there is sole Debenture Holder in the Sixth Applicant Company and that the Sixth Applicant Company having procured the written consent affidavit from the sole Debenture Holder in the Sixth Applicant Company which is annexed as Annexure – Q6 to the Company Application. In view of the fact that the Debenture Holder of the Sixth Applicant Company has given its consent affidavit, the meeting of the Debenture Holder of the Sixth Applicant Company is hereby dispensed with.
11. The Counsel for the Applicant Companies respectfully submits that:
- (i) Being a merger of either directly or indirectly wholly owned subsidiary companies into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company;
 - (ii) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and post amalgamation, the assets of the Transferee Company, will be sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain positive post-merger;
 - (iii) The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme;

- (iv) No undertaking of the Transferor Company is being parted away or being disposed-off and hence provisions of Section 180 of the Companies Act, 2013 are also not applicable.
12. The Counsel for the Seventh Applicant Company/ the Transferee Company submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by Hon'ble Bombay High Court in case of *Mahaamba Investments Limited v/s. IDI Limited (2001) SCC Online Bom 1174*, *BON Limited in Company Scheme Petition No. 123 of 2010* and this Tribunal in *CSA No 243 of 2017* in the matter of *Housing Development Finance Corporation Limited*, in *CSA No. 915 of 2017* in the matter of *Godrej Consumer Products Limited*, in *CSA No. 899 of 2017* in case of *Mahindra CIE Automotive Limited*, in *CSA No. 1019 of 2017* in case of *Godrej Properties Limited*, in *CSA No. 1615 of 2018* in case of *Dolvi Minerals and Metals Private Limited*, in *CSA No. 396 of 2019* in *JSW Logistic Infrastructure Private Limited*, in *CSA No. 1611 of 2019* in *CEAT Specialty Tyres Limited*, in *CSA No. 3123 of 2019* in *JAI Corp Limited*, in *CSA No. 4149 of 2019* in *Godrej Properties Limited*, and in *CSA No. 634 of 2020* in *Asian Paints Limited*. The Counsel for the Transferee Company submits that the facts in the present case are similar to the facts of above case therefore no meeting of shareholders, creditors or debenture holders of the Transferee Company is required to be convened.
13. The Counsel for the Transferee Company further submits that the meeting of Secured Creditors in the Transferee Company be dispensed in support of Company's Further Affidavit, inter-alia stating therein that there are 22 (Twenty Two) Secured Creditors of INR 1881.81 crores in the Transferee Company and that the Transferee Company has procured

the written consent from all the Secured Creditors in the Transferee Company, copies of which are annexed as Annexure – ‘B1-B22’ to the Further Affidavit filed on July 21, 2021. In view of the fact that all the Secured Creditors of the Transferee Company have given their consent, the meeting of the Secured Creditors of the Transferee Company is hereby dispensed with.

14. The Counsel for the Seventh Applicant Company submits that the meeting of the Equity Shareholders and Unsecured Creditors of the Seventh Applicant Company/ the Transferee Company may be dispensed with since the Transferor Companies are either directly or indirectly wholly-owned subsidiaries of the Seventh Applicant Company/ the Transferee Company. The Counsel for the Applicant Companies further clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory Authorities.
15. The Applicant Companies are accordingly directed to serve notices along with copy of scheme by Registered Post-AD/Speed Post and Hand Delivery upon:
- (i) Concerned Income Tax Authorities within whose jurisdiction the Applicant Company’s assessments are made

Name of the Applicant Company	PAN	Jurisdiction
Patel Hydro Power Private Limited	AAFPCP8046F	Circle 10(3)(2), Mumbai
Zeus Minerals Trading	AAACZ2818E	Circle 11(3)(4), Mumbai

Private Limited		
Patel Concrete & Quarries Private Limited	AAECP5197L	Circle 10(3)(3), Mumbai
Patel Lands Limited	AAF6316A	Circle 10(3)(3), Mumbai
Patel Engineers Private Limited	AADCP7296H	Circle 10(3)(3), Mumbai
Phedra Projects Private Limited	AAECP0950B	Circle 10(3)(1), Mumbai
Patel Engineering Limited	AAACP2567L	Central Circle 3 (4) Mumbai

- (ii) the Central Government through the office of Regional Director, Western Region, Mumbai (iii) Registrar of Companies, Mumbai (iv) Securities and Exchange Board of India (SEBI) (only in case of the Transferee Company), (v) BSE Limited (only in case of the Transferee Company), (vi) National Stock Exchange of India Limited (NSE) (only in case of the Transferee Company), (vii) concerned Goods and Service Tax Authorities and any other applicable regulatory authority pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Companies, failing

which, it shall be presumed that the authorities have no representations to make on the proposals.

16. The First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company, the Fifth Applicant Company and the Sixth Applicant Company are also directed to serve notice by Registered Post-AD/Speed Post and Hand Delivery upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Mr. Hemant Kumar Shah, Chartered Accountant, having E-mail id: shakhemant@yahoo.com; M- +91-9004037902; is appointed to assist the Official Liquidator to scrutinize the books of accounts of all the said Transferor Companies for the last 5 years and submit its representation / report to the Tribunal. The aforesaid Companies to pay fees total of INR 2,00,000/- to be shared equally by Transferor Companies for this purpose. If no representation / response is received by the Tribunal from Official Liquidator, Bombay within a period of thirty days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Order

17. The Transferee Company has already submitted the Consent Affidavits from its 22 Secured Creditors having an outstanding of Rs.1,881.81 crore vide its Additional Affidavit dated 21.07.2021. The Sixth Transferor Company has also submitted the consent of Debenture Holder along with the Application.

18. Following are the list of Secured Creditors of the Seventh Applicant Company/Transferee Company:

Sr. No.	Particulars	O/S as on 31.03.2021 (Rs in Crore)	NOC Reference No	Date
1.	Bank of India Andheri Large Corporate Branch	191.89	ANLCB/PZ/21- 22/000144	09.06.2021
2.	Bank of Maharashtra Industrial Finance Branch	156.49	AY39/Adv/PEL/ NOC/2021-22	08.06.2021
3.	Union Bank of India Industrial Finance Branch	132.39	IFB: MUM: ADV:2021-22:868	27.05.2021
4.	DBS Bank Limited Mumbai Branch- GF, Express Towers, Nariman Point, Mumbai- 400021	112.38	CDT/ADMIN/37 0/2021	11.06.2021
5.	Export Import Bank of India Centre One Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai-400005	23.93	LMG-MRO/DE- 130/2021-22/275	11.06.2021
6.	General Insurance Corporation of India "SURAKSHA", 170, J. Tata Road, Churchgate, Mumbai-400020.	4.39	-	22.06.2021
7.	ICICI Bank Limited ICICI Bank Towers, Bandra- Kurla Complex, Mumbai-400051	169.83	SSG213491433300	28.05.2021

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Sr. No.	Particulars	O/S as on 31.03.2021 (Rs in Crore)	NOC Reference No	Date
8.	IDBI Bank Limited WTC Complex, Cuffe Parade, Mumbai-400005	108.16	IDBI/LCG/PEL/ 2021-22/0083	11.06.2021
9.	IndusInd Bank Limited Opus Centre, plot No 47, Central Road, Opp. Tunga Paradise, MIDC, Andheri E Mumbai 400093	23.18	IBL/CO/103/202 1-22	15.06.2021
10.	RBL Bank Limited One India bulls Centre, Tower 2B, 6 th floor,841 Senapati Bapat Marg, Lower Parel, Mumbai- 400013	13.86	-	24.06.2021
11.	SREI Equipment Finance ltd "Paradise", 51k/51L, Bhulabhai Desai Road, Near, Shyam Niwas, Breach Candy, Mumbai-400026	43.25	-	29.05.2021
12.	IFCI factors Limited- through project Lead Niraj Cements Structural limited, Pas Enterprises, Bylan Niraj Infra Project Private Limited	32.22	-	05.07.2021

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Sr. No.	Particulars	O/S as on 31.03.2021 (Rs in Crore)	NOC Reference No	Date
13.	Viniyog Invest. & Trading Company Private Ltd. 121A, Embassy Apartments, Napeansea Road, Mumbai-400006	8.96	-	02.07.2021
14.	KIC Food Products Private Ltd 29, Hanuman Road, New Delhi, 110001	4.74	-	02.07.2021
15.	Capsave Finance Private Limited-through project lead Niraj Cements Structural limited	15.00	-	05.07.2021
16.	Standard Chartered Bank	5.17	-	11.06.2021
17.	YES Bank Limited	88.46	YBL/ARM/2021-22/181	17.06.2021
18.	AXIS Bank Limited	133.81	AXISB/CO/SAG /GK/2021-22/110621	11.06.2021
19.	Bank of Baroda 10/12, Mumbai Samachar Marg, Fort, Mumbai 400001	303.07	BOB/CFSBAL/P EL/2021-22/35	11.06.2021
20.	State Bank of India Backbay Reclamation Branch	20.69	BBR/AMT-IV/2021-22/0220	08.06.2021

Sr. No.	Particulars	O/S as on 31.03.2021 (Rs in Crore)	NOC Reference No	Date
21.	Canara Bank Large Corporate Branch-fort 7 th floor, Maker Chambers III, Nariman Point, Mumbai-400021	105.31	LCB- FORT/ADV/CR- 228/AD/286/202 1-22	08.062021
22.	Life Insurance Corporation of India	184.63	CO/INVM/Revie ws/STD/2021.22/ PEL/SSM	20.07.2021
	Total		1,881.81	

19. This Bench has considered the submissions made by the Learned Counsel for the Applicant Companies with respect to holding the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors or getting their Consent Affidavits. The Six Transferor Companies have already complied with the requirements by submitting the Consents Affidavits of the Equity Shareholders and Unsecured Creditors. There are no Secured Creditors in these Transferor Companies. This Bench is of considered opinion that in view of the advent of the IBC, 2016, where a Creditor having an outstanding of Rs. One Crore and above can bring Insolvency Petition against the Corporate Debtor, it will be in the fitness of the things that a scheme of Merger should have Consent of Equity Shareholders either in duly constituted meeting or by way of Consent Affidavits filed.

20. Further, the Consent Affidavits of the Secured Creditors of Rs.1881.81 crore of the Transferee Company have also been provided by the Transferee Company as detailed above. The condition of Consent Affidavit of the Secured Creditors has since been complied.
21. The Transferee Company has not submitted the list of Equity Shareholders and Unsecured Creditors. As far as the Meeting/Consent Affidavit of the Equity Shareholders of the Transferee Company are concerned, the Transferee Company will submit Consent Affidavits of the Equity Shareholders of the Transferee Company or hold the meeting of the Equity Shareholders before filing of the Company Petition. In case the Transferee Company chooses for the meeting of the Equity Shareholders, the same may be held on 22nd December, 2021, Wednesday at 11.00 am at the registered office of the Transferee Company or at any convenient place in Mumbai. The Chairman/Managing Director of the Transferee Company will be the Chairperson of the meeting of the Equity Shareholders.
22. At least 30 (thirty) clear days before the aforesaid meeting of the Equity Shareholders of the Transferee Company be held as aforesaid, a notice convening the said meeting at the day, date and time aforesaid, together with copies of the Scheme and the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, shall be sent by Registered Post-AD/Speed Post and e-mail to the Equity Shareholders of the Transferee Company whose email addresses are duly registered with the Transferee Company, addressed to each of the shareholders, at their last known e-mail addresses as per the records of the Transferee Company.

23. At least 30 (thirty) days before the aforesaid meeting of the Equity Shareholders of the Transferee Company to be held as aforesaid, an advertisement of notice convening the said meeting, indicating the day, date and time aforesaid be published once each in '*Business Standard*' in English and '*Navshakti*' in Marathi, both circulated at Mumbai, and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230 (3) of the Companies Act, 2013 can be obtained free of charge by emailing the Transferee Company.
24. Keeping in view of the fact and circumstances of the case, as 14 Transferor Companies are transferring into the Transferee Company and in the interest of the creditors of the Applicant Companies, this Bench directs the Transferee Company to issue Notice of Scheme to all its Unsecured Creditors by Registered Post-AD/Speed Post and by E-mail whose Email IDs are available with the Company and file Consent Affidavits of the Unsecured Creditors at least of the value of 90% at the time of filing of Company Petition.
25. Further, the Bench has observed that since there are 7 (seven) IBC proceedings pending against the Applicant Companies, the list of which has been filed by the Applicant Companies vide Additional Affidavit dated 11.06.2021 annexed as Annexure "C", the Applicant Companies are directed to issue notice of Scheme by Registered Post-Ad/Speed Post and Email upon the Petitioners who have filed the Insolvency Proceedings against the Applicant Companies and specific consents of these Petitioners of the IBC Proceedings is to be submitted at the time of filing of Company Petition.
26. The Applicant Companies to file affidavit of service and compliance within 10 working days after serving the notices to all the Regulatory

Authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Rajesh Sharma
Member (Technical)

15.11.2021

/skd/

Sd/-

Suchitra Kanuparthi
Member (Judicial)