

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Corporate Law II**
Semester- VI (Batch: 2018-23)

End Semester Online Examination: July-August 2021

Date: 25th July, 2021

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 1 mark: 20 words, 2-3 marks: 60-100 words, 5-6 marks: 150 -180 words, 10 marks-600 -650 words.

	Marks
Q.1 Answer the following:	(2+5=7)
a) Presuming that the TATA-CYRUS MISTRY legal battle has happened in 2005, decide what would have been the jurisdiction for filing the petition by Cyrus Mistry. b) Write the appropriate forum/jurisdiction (according to the provisions of the Companies Act,2013) for the following (20 words) (1 X 5=5 marks) <ul style="list-style-type: none"> i) Incorporation of Company ii) Sanction of a scheme of Arrangement of Mergers and Amalgamations iii) Corporate Fraud iv) Conversion of Company v) Oppression and Mismanagement 	
Q.2 Answer the following:	(3+3+2=8)
a) Write one fact of a case (mention full citation), where the Adjudicating Authority has held that the act complained by the petitioner was not amounting to oppression. b) Write two examples: where waiver can be granted? c) Write one example of Mismanagement with the help of decided case/s.	
Q.3 Write a research note on, 'A Better Corporate Governance for a Healthy and Efficient Corporate Entity' referring to best international practices.	(10)
Q.4 Read the attachment (Annexure 1) and answer as instructed.	(6 + 2+2 +3+ 2 =15)
a) Analyse the case (Annexure 1) covering the below mentioned points: <ul style="list-style-type: none"> i) Brief fact ii) Issues iii) Arguments of the Appellant and Respondent iv) Observation of the NCLAT v) Observation of the Supreme Court and Judgment 	

- b) Search any one case of NCLAT/Supreme Court, where the nature of 'debt' and petitioner are similar to the above case. (Annexure 1) *Mention the detailed citation of the case.*
- c) Presuming that the claim demanded by the Appellant in the above case (Annexure 1) is 50 Lakhs, and other situations remain the same, decide about the maintainability of the petition for initiation of CIRP under the IBC.
- d) Write examples of Avoidance of transactions with the help of decided cases.
- e) Whether a resolution applicant, who is not eligible to submit a resolution plan under section 29 A of the IBC, can become eligible subsequently?

- Q.5 Read the (**Annexure 2**) and (**Annexure 3**) and answer the following: (5+2+2+1=10)
- a) Examine the legal validity of the scheme of Amalgamation (**Annexure 2**) between Bamnival Steel Limited, TATA Steel BSL Ltd and TATA Steel Ltd., referring to relevant provisions, rules and cases.
 - b) In the order of the NCLT (**Annexure 3**), what direction was given by the Tribunal?
 - c) In the order of the NCLT (**Annexure 3**), is there any flexibility provided to the Applicant company / companies in the background of Covid 19?
 - d) What is the appointed date of the scheme? Is there any direction of the Tribunal related to the appointed date of the scheme?

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. 4050 of 2020

Ramesh Kymal

.... Appellant

Versus

M/s Siemens Gamesa Renewable Power Pvt Ltd.

.... Respondent

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 The appellate jurisdiction of this Court under Section 62 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) has been invoked to challenge the judgement and order of the National Company Law Appellate Tribunal (“**NCLAT**” or “**Appellate Tribunal**”) dated 19 October 2020. The NCLAT affirmed the decision of the National

Company Law Tribunal (“**NCLT**” or “**Adjudication Authority**”) dated 9 July 2020, holding that in view of the provisions of Section 10A, which have been inserted by Act 17 of 2020 (the “**Amending Act**”) with retrospective effect from 5 June 2020, the application filed by the appellant as an operational creditor under Section 9 was not maintainable.

2 Some of the salient facts set out in the appeal are being adverted to in order to indicate the broad contours of the controversy. The issue involved raises a question of law. Hence, while setting out the facts as set up in the appeal, we need to clarify that the factual dispute has not arisen for adjudication.

3 The appellant claims that a sum of INR 104,11,76,479 is due and payable to him pursuant to his resignation “*from all capacities held by him in the respondent in accordance with the various Employment Agreements/Incentive Agreements*” entered into by him with the respondent during his tenure as Chairman and Managing Director. The appellant entered into an Employment Agreement with the respondent on 16 July 2009. Another Employment Agreement was entered into on 16 December 2013, effective from 1 January 2014, which superseded the previous agreement. The Employment Agreement dated 16 December 2013 was coupled with an Incentive Agreement signed on the same date. The Incentive Agreement is stated to have been amended and restated on 17 April 2015, along with a further amendment through a Side Letter dated 20 April 2015. Further, the new

Employment Agreement was amended through a Letter Amendment No. 1 dated 17 April 2015.

4 On 21 January 2020, the appellant submitted his resignation to the respondent and its parent entity, detailing the entitlements which he claimed under the Employment and Incentive Agreements. On 28 January 2020, the respondent acknowledged receipt of the letter of resignation and requested the appellant to continue in employment beyond the 60 days' notice period stipulated in the Employment Agreement. According to the appellant, he agreed to continue to provide his services to the respondent till 30 April 2020. There was an exchange of communications between the parties and, according to the appellant, by an email dated 27 March 2020, the respondent confirmed the payments which were due and payable to him under the letter of resignation (except for point 12). The appellant is stated to have addressed a final reminder by an email dated 27 April 2020, three days prior to the extended notice period came to an end.

5 On 28 April 2020, a termination letter was addressed to the appellant. The appellant issued a demand notice on 30 April 2020 in Form 3 of the IBC. The demand notice specified that the date of default was 30 April 2020.

6 On 11 May 2020, the appellant filed an application¹ under Section 9 of the IBC on the ground that there was a default in the payment of his operational dues. During the pendency of the application, an Ordinance² was promulgated by the President of India on 5 June 2020 by which Section 10A was inserted into the IBC. Section 10A reads as follows:

“10A. Suspension of initiation of corporate insolvency resolution process.— Notwithstanding anything contained in sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

7 The respondent filed an application³ seeking the dismissal of the appellant’s application on the basis of the newly inserted provisions of Section 10A. The NCLT upheld the submission of the respondent, holding that a bar has been created by the newly inserted provisions of Section 10A. This decision has been upheld in appeal by the NCLAT.

¹ IBA/215/2020

² Ordinance 9 of 2020 (the “**Ordinance**”)

³ IA 395 of 2020

8 The issue which falls for determination in this appeal is whether the provisions of Section 10A stand attracted to an application under Section 9 which was filed before 5 June 2020 (the date on which the provision came into force) in respect of a default which has occurred after 25 March 2020. Before proceeding to discuss the rival submissions, it is necessary to preface the discussion with reference to three significant dates which have a bearing on the present proceedings:

- 30 April 2020 – date of default as set up in Form 3;
- 11 May 2020 – date of institution of the application under Section 9; and
- 5 June 2020 – date on which Section 10A was inserted in the IBC.

9 The date of default is crystalized as 30 April 2020 in the demand notice issued by the appellant in Form 3, which is prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The statutory form provides for a disclosure of the particulars of the operational debt. The disclosure which has been made by the appellant includes the amount claimed in default and the date of default, as tabulated below:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED [ATTACH THE WORKINGS FOR COMPUTATION OF -*DEFAULT IN TABULAR FORM]	INR 104,28, 76,479/- (Indian Rupees One Hundred and Four Crores Twenty Eight Lakhs Seventy Six Thousand Four Hundred and Seventy Nine only) as on 30.04.2020 along with interest @ 18% (eighteen percent) p.a. till the date of realisation of entire payment.
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10 Sub-Section (1) of Section 8 of IBC stipulates:

“8. Insolvency resolution by operational creditor.—(1) an operational creditor may, on the occurrence of a default, deliver a demand notice of the unpaid operational debt or a copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.”

Under Section 9(1), the operational creditor may file an application before the Adjudicating Authority for initiating the Corporate Insolvency Resolution Process (“CIRP”), after the expiry of a period of ten days from the date of delivery of the notice (or invoice demanding payment) under sub-Section (1) of Section 8, if the operational creditor does not receive payment from the corporate debtor or a notice of the dispute under sub-Section (2) of Section 8. The appellant having specified 30 April 2020 as the date of default, this appeal must proceed on that basis. It is necessary to make this clear at the outset because an attempt has been made during the course of the submissions by Mr Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the appellant, to submit that though the demand notice mentions the date of default as 30 April 2020, the "actual first date of default" was 21 January 2020 when the letter of resignation was tendered and that the “second date of default” was 23 March 2020 when the sixty days’ notice period from the letter of resignation submitted by the appellant concluded. This attempt to set back the date of default to either 21 January 2020 or 23 March 2020 is plainly untenable for the reason that it is contrary to the disclosure made by the appellant in the demand notice which has been issued in pursuance of the provisions of Section 8(1) and Section 9 of the IBC. The demand notice triggers further actions which are

adopted towards the initiation of the insolvency resolution process. The question which needs to be resolved is whether Section 10A would stand attracted to a situation such as the present where the application under Section 9 was filed prior to 5 June 2020, when Section 10A was inserted, and in respect of a default which has taken place after 25 March 2020.

11 Mr Neeraj Kishan Kaul submits that:

- (i) Section 10A creates a bar to the 'filing of applications' under Sections 7, 9 and 10 in relation to defaults committed on or after 25 March 2020 for a period of six months, which can be extended up to one year;
- (ii) The Ordinance and the Act which replaced it do not provide for the retrospective application of Section 10A either expressly or by necessary implication to applications which had already been filed and were pending on 5 June 2020;
- (iii) Section 10A prohibits the filing of a fresh application in relation to defaults occurring on or after 25 March 2020, once Section 10A has been notified (*i.e.*, after 5 June 2020);
- (iv) Section 10A uses the expressions "shall be filed" and "shall ever filed" which are indicative of the prospective nature of the statutory provision in its application to proceedings which were initiated after 5 June 2020; and

- (v) The IBC makes a clear distinction between the "initiation date" under Section 5(11) and the "insolvency commencement date" under Section 5(12).

12 On the above premises, it has been submitted that Section 10A will have no application. Mr Kaul also urged that in each case it is necessary for the Court and the tribunals to deduce as to whether the cause of financial distress is or is not attributable to the Covid-19 pandemic. In the present case, it was asserted that the onset of Covid-19, which was the reason for the insertion of Section 10A, has nothing to do with the default of the respondent to pay the outstanding operational debt of the appellant, which owes its existence even before the onset of the pandemic. Hence, it has been submitted that the event of default (30 April 2020) in the notice of demand cannot be read in isolation.

13 Opposing the above submissions, it has been urged by Mr Gopal Jain, learned Senior Counsel on behalf of the respondent, that:

- (i) The legislative intent in the insertion of Section 10A was to deal with an extraordinary event, the outbreak of Covid-19 pandemic, which led to financial distress faced by corporate entities;
- (ii) Section 10A is prefaced with a non-obstante clause which overrides Sections 7, 9 and 10; and

- (iii) Section 10A provides a cut-off date of 25 March 2020 and it is evident from the substantive part of the provision, as well as from the proviso and the explanation, that no application can be filed for the initiation of the CIRP for a default occurring on and after 25 March 2020, for a period of six months or as extended upon a notification.

14 The rival submissions can now be considered.

15 The financial distress caused by the outbreak of Covid-19 provides the backdrop to the insertion of Section 10A. The underlying rationale for the insertion of Section 10A has been explained in the recitals to the Ordinance, which are extracted below:

"...

AND WHEREAS COVID-19 pandemic has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond their control;

AND WHEREAS a **nationwide lockdown is in force since 25th March, 2020** to combat the spread of COVID-19 which has added to disruption of normal business operations;

AND WHEREAS it is **difficult to find adequate number of resolution applicants to rescue the corporate person** who may default in discharge of their debt obligation;

AND WHEREAS it is considered expedient to suspend under sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons which are **experiencing distress on account of unprecedented situation**. being pushed into insolvency proceedings under the Court for some time;

AND WHEREAS it is considered expedient to exclude the **defaults arising on account of unprecedented situation** for the purposes of insolvency proceeding under this Code;”

(emphasis supplied)

16 Section 10A is prefaced with a non-obstante provision which has the effect of overriding Sections 7, 9 and 10. Section 10A provides that:

- (i) no application for the initiation of the CIRP by a corporate debtor shall be filed;
- (ii) for any default arising on or after 25 March 2020; and
- (iii) for a period of six months or such further period not exceeding one year from such date as may be notified in this behalf.

The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP of a corporate debtor "for the said default occurring during the said period". The explanation which has been inserted for the removal of doubts clarifies that Section 10A shall not apply to any default which has been committed under Sections 7, 9 and 10 before 25 March 2020.

17 Section 10A makes a reference to the initiation of the CIRP. Clauses (11) and (12) of Section 5 of the IBC define two distinct concepts, namely:

- (i) the initiation date; and
- (ii) the insolvency commencement date.

18 The “initiation date” is defined in Section 5(11) in the following terms:

"5(11) "initiation date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process;"

The expression "insolvency commencement date" is defined in Section 5(12) in the following terms:

“5(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be.”

19 Section 5(11) stipulates that the date on which a financial creditor, corporate applicant or operational creditor makes an application to the adjudicating authority for initiating the CIRP is the “initiation date”. Distinguished from this is the “insolvency commencement date”, which is the date on which the application for initiating the CIRP under Sections 7, 9 or 10, as the case may be, is admitted by the Adjudicating Authority.

20 The substantive part of Section 10A adverts to an application for the initiation of the CIRP. It stipulates that for any default arising on or after 25 March 2020, no

application for initiating the CIRP of a corporate debtor shall be filed for a period of six months or such further period not exceeding one year "from such date" as may be notified in this behalf. The expression "from such date" is evidently intended to refer to 25 March 2020 so that for a period of six months (extendable to one year by notification) no application for the initiation of the CIRP can be filed. The submission of the appellant is that the expression "shall be filed" is indicative of a legislative intent to make the provision prospective so as to apply only to those applications which were filed after 5 June 2020 when the provision was inserted. Such a construction cannot be accepted.

21 The date of 25 March 2020 has consciously been provided by the legislature in the recitals to the Ordinance and Section 10A, since it coincides with the date on which the national lockdown was declared in India due to the onset of the Covid-19 pandemic. In **Sardar Inder Singh vs State of Rajasthan**⁴, the Rajpramukh promulgated the Rajasthan (Protection of Tenants) Ordinance (9 of 1949) on 21 June 1949 which, *inter alia*, provided for the reinstatement of tenants who had been in occupation on 1 April 1948 but had been subsequently dispossessed. When it was challenged before the Supreme Court, the Constitution bench, speaking through Justice T L Venkatarama Ayyar, relied on the recital in its preamble⁵ while interpreting its provisions. The Court held that:

⁴ 1957 SCR 605

⁵ "Whereas with a view to putting a check on the growing tendency of landholders to eject or dispossess tenants from their holdings, and in the wider national interest of increasing the production of foodgrains, it is expedient to make provisions for the protection of tenants in Rajasthan from ejectment or dispossession from their holdings."

“11. In the present case, the preamble to the Ordinance clearly recites the state of facts which necessitated the enactment of the law in question, and Section 3 fixed the duration of the Act as two years, on an understanding of the situation as it then existed. At the same time, it conferred a power on the Rajpramukh to extend the life of the Ordinance beyond that period, if the state of affairs then should require it. When such extension is decided by the Rajpramukh and notified, the law that will operate is the law which was enacted by the legislative authority in respect of “place, person, laws, powers”, and it is clearly conditional and not delegated legislation as laid down in *Queen v. Burah* [(1877-8) 5 IA 178, 180, 194, 195] and must, in consequence, be held to be valid...

...

(4) We shall next consider the contention that the provisions of the Ordinance are repugnant to Article 14 of the Constitution, and that it must therefore be held to have become void. In the argument before us, the attack was mainly directed against Sections 7(1) and 15 of the Ordinance. The contention with reference to Section 7(1) is that under that section landlords who had tenants on their lands on April 1, 1948, were subjected to various restrictions in the enjoyment of their rights as owners, while other landlords were free from similar restrictions. There is no substance in this contention. **The preamble to the Ordinance recites that there was a growing tendency on the part of the landholders to eject tenants, and that it was therefore expedient to enact a law for giving them protection; and for granting relief to them, the Legislature had necessarily to decide from what date the law should be given operation, and it decided that it should be from April 1, 1948. That is a matter exclusively for the Legislature to determine, and the propriety of that determination is not open to question in courts.** We should add that the petitioners sought to dispute the correctness of the recitals in the preamble. This they clearly cannot do. Vide the observations of Holmes, J. in *Block v. Hirsh* [(1920) 65 LEd 865 : (1920) 256 US 135].

12. A more substantial contention is the one based on Section 15, which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of

the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. **It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the legislature;** and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided...”

(emphasis supplied)

22 The language of the provision is not always decisive to arrive at a determination whether the provision is applicable prospectively or retrospectively. Justice G.P. Singh in his authoritative commentary on the interpretation of statutes, *Principles of Statutory Interpretation*⁶, has stated that:

“In deciding the question of applicability of a particular statute to past events, the language used is no doubt the most important factor to be taken into account; but **it cannot be stated as an inflexible rule that use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation.** Thus, the words “a debtor commits an act of bankruptcy” were held to apply to acts of bankruptcy committed before the operation of the Act. The words “if a person has been convicted” were construed to include anterior convictions. The words “has made”, “has ceased”, “has failed” and “has become”, may denote events happening before or after coming into force of the statute and all that is necessary is that the event must have taken place at the time when action on that account is taken under the statute.....And the word “is” though normally referring to the present often has a future meaning and may also have a past signification in the sense of “has been. **The real issue in each case is as to the dominant intention of the Legislature to be gathered from the language used, the object indicated, the nature of rights affected, and the circumstances under which the statute is passed.**”

(emphasis supplied)

6. G.P. Singh, *Principles of Statutory Interpretation* (1st edn., Lexis Nexis 2015)

23 Adopting the construction which has been suggested by the appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.

24 We have already clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated. It must be noted, however, that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the corporate debtor or the right of creditors to recover it.

25 Section 10A does not contain any requirement that the Adjudicating Authority must launch into an enquiry into whether, and if so to what extent, the financial health of the corporate debtor was affected by the onset of the Covid-19 pandemic. Parliament has stepped in legislatively because of the widespread distress caused by an unheralded public health crisis. It was cognizant of the fact that resolution applicants may not come forth to take up the process of the resolution of insolvencies (this as we have seen was referred to in the recitals to the Ordinance), which would lead to instances of the corporate debtors going under liquidation and no longer remaining a going concern. This would go against the very object of the IBC, as has been noted by a two-Judge bench of this Court in its judgment in **Swiss Ribbons (P) Ltd. v. Union of India**⁷. Speaking through Justice Rohinton F Nariman, the Court held as follows:

“27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and

⁷ (2019) 4 SCC 17

foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. (See *ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta*, (2019) 2 SCC 1] at para 83, fn 3)."

Hence, the embargo contained in Section 10A must receive a purposive construction which will advance the object which was sought to be achieved by enacting the provision. We are therefore unable to accept the contention of the appellant.

26 The date of the initiation of the CIRP is the date on which a financial creditor, operational creditor or corporate applicant makes an application to the adjudicating authority for initiating the process. On the other hand, the insolvency commencement date is the date of the admission of the application. This distinction is also evident from the provisions of sub-section (6) of Section 7, sub-section (6) of Section 9 and sub-section (5) of Section 10. Section 7 deals with the initiation of the CIRP by a financial creditor; Section 8 provides for the insolvency resolution by an operational creditor; Section 9 provides for the application for initiation of the CIRP by an operational creditor; and Section 10 provides for the initiation of the CIRP by a corporate applicant. NCLAT has explained the difference between the initiation of the CIRP and its commencement succinctly, when it observed:

“13. Reading the two definition clauses in juxtaposition, it emerges that while the first viz. 'initiation date' is referable to filing of application by the eligible applicant, the later viz. 'commencement date' refers to passing of order of admission of application by the Adjudicating Authority. The 'initiation date' ascribes a role to the eligible applicant whereas the 'commencement date' rests upon exercise of power vested in the Adjudicating Authority. Adopting this interpretation would leave no scope for initiation of CIRP of a Corporate Debtor at the instance of eligible applicant in respect of Default arising on or after 25th March, 2020 as the provision engrafted in Section 10A clearly bars filing of such application by the eligible applicant for initiation of CIRP of Corporate Debtor in respect of such default. The bar created is retrospective as the cut-off date has been fixed as 25th March, 2020 while the newly inserted Section 10A introduced through the Ordinance has come into effect on 5th June, 2020. The object of the legislation has been to suspend operation of Sections 7, 9 & 10 in respect of defaults arising on or after 25th March, 2020 i.e. the date on which Nationwide lockdown was enforced disrupting normal business operations and impacting the economy globally. Indeed, the explanation removes the doubt

by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020.”

27 We are in agreement with the view which has been taken by the NCLAT for the reasons which have been set out earlier in the course of this judgment. We affirm the conclusion of the NCLAT. The appeal is accordingly dismissed. There shall be no order as to costs.

28 Pending application(s), if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[MR Shah]

**New Delhi;
February 9, 2021.**

COMPOSITE SCHEME OF AMALGAMATION

OF

BAMNIPAL STEEL LIMITED

AND

TATA STEEL BSL LIMITED


(formerly known as Bhushan Steel Limited)

WITH

TATA STEEL LIMITED

**(UNDER SECTIONS 230 to 232 AND OTHER APPLICABLE PROVISIONS OF
THE COMPANIES ACT, 2013)**

**TRUE COPY
TATA STEEL LIMITED**


**(PARVATHEESAM. K.) .
COMPANY SECRETARY &
CHIEF LEGAL OFFICER (CORPORATE & COMPLIANCE)**

I. INTRODUCTION

1. This composite scheme of amalgamation ("**Scheme**") is presented pursuant to the provisions of Sections 230 to 232 and other relevant provisions of the Companies Act, 2013 ("**Act**"), as may be applicable, and in compliance with Section 2(1B) of the Income-Tax Act, 1961 ("**IT Act**"), as applicable for the following:
 - 1.1 Amalgamation of Barnipal Steel Limited ("**Transferor Company 1**") into and with Tata Steel Limited ("**Transferee Company**") and consequent dissolution of the Transferor Company 1 without winding up; and
 - 1.2 Amalgamation of Tata Steel BSL Limited (formerly known as Bhushan Steel Limited) ("**Transferor Company 2**") into and with the Transferee Company and consequent dissolution of the Transferor Company 2 without winding up.

The Transferor Company 1 and the Transferor Company 2 are hereinafter collectively referred to as the "**Transferor Companies**". The Transferor Companies and the Transferee Company are hereinafter collectively referred to as the "**Companies**".

- 1.3 The Scheme is divided into the following parts:

Part	Particulars
I.	Background, Rationale, Definitions, Date of taking effect and Share Capital
II.	Amalgamation of the Transferor Company 1 into and with the Transferee Company and the matters incidental thereto
III.	Amalgamation of the Transferor Company 2 into and with the Transferee Company and the matters incidental thereto
IV.	General terms and conditions



PART I

I. BACKGROUND AND DESCRIPTION OF THE COMPANIES:

1. Tata Steel Limited

- 1.1 The Transferee Company (CIN: L27100MH1907PLC000260) is a public limited company incorporated on August 26, 1907 under the provisions of the Indian Companies Act, 1882 and is a public limited company within the meaning of the Act.
- 1.2 The registered office of the Transferee Company is at Bombay House, 24, Homi Mody Street, Fort, Mumbai 400001, Maharashtra.
- 1.3 The Transferee Company is engaged in the business of manufacturing steel and offers a broad range of steel products including a portfolio of high value added downstream products such as hot rolled, cold rolled and coated steel, rebars, wire rods, tubes and wires. The Transferee Company also has a well-established distribution network.
- 1.4 The equity shares of the Transferee Company are listed on the BSE Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") (hereinafter collectively referred as the "Stock Exchanges"). The global depository receipts of the Transferee Company are listed on the Luxembourg Stock Exchange and the London Stock Exchange. Further, the unsecured redeemable non-convertible debentures and perpetual hybrid securities in the form of non-convertible debentures of the Transferee Company are listed on the wholesale debt market segments of the Stock Exchanges.
- 1.5 The Transferee Company holds 25,88,95,798 (twenty five crores eighty eight lakhs ninety five thousand seven hundred ninety eight) equity shares constituting 100% (hundred percent) of the equity share capital of the Transferor Company 1 and through the Transferor Company 1 holds 79,44,28,986 (seventy nine crores forty four lakhs twenty eight thousand nine hundred eighty six) equity shares constituting 72.65% (seventy two point six five per cent) of the equity share capital of the Transferor Company 2. The Transferee Company also holds 1070,00,00,000 (one thousand seventy crores) non-convertible redeemable preference shares and 900,00,00,000 (nine hundred crores) optionally convertible redeemable preference shares of the Transferor Company 2 constituting 100% (hundred percent) of the preference share capital of the Transferor Company 2. Thus, the Transferor Companies are under the common control of the Transferee Company and the Transferee Company is the parent of the Transferor Companies by reason of holding in excess of 90% (ninety percent) beneficial ownership in the total issued share capital of the Transferor Companies.



2. **Bamnival Steel Limited**

- 2.1 The Transferor Company 1 (CIN: U27310MH2018PLC304494) is a public limited company incorporated on January 19, 2018 under the provisions of the Act.
- 2.2 The registered office of the Transferor Company 1 is at Tarapur Complex, Plot No. F8, MIDC, Tarapur Industrial Area, Palghar, Thane 401506, Maharashtra.
- 2.3 The Transferor Company 1 is a wholly owned subsidiary of Transferee Company and was incorporated *inter alia* for the purpose of completing the acquisition of the Transferor Company 2 by way of the corporate insolvency resolution process ("**CIR Process**") prescribed under the Insolvency and Bankruptcy Code, 2016 ("**IBC Code**"). Pursuant to the order of the Adjudicating Authority dated May 15, 2018 ("**IBC Order**"), the Transferee Company through the Transferor Company 1 acquired 72.65% (seventy two point six five per cent) of the equity share capital of the Transferor Company 2.

3. **Tata Steel BSL Limited**

- 3.1 The Transferor Company 2 (CIN: L74899DL1983PLC014942) (formerly known as Bhushan Steel Limited) is a public limited company incorporated on January 7, 1983 under the provisions of the Companies Act, 1956 and is a public limited company within the meaning of the Act.
- 3.2 The registered office of the Transferor Company 2 is at Ground Floor, Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar, Mathura Road, South Delhi, New Delhi 110065. The Board of the Transferor Company 2 on February 13, 2019, approved the shifting of the registered office of the Transferor Company 2 to the State of Maharashtra, within the jurisdiction of the Registrar of Companies, Mumbai. Further, the shareholders of the Transferor Company 2 also approved the shifting of registered office at the extraordinary general meeting of the Transferor Company 2 held on March 11, 2019. The Transferor Company 2 is in the process of undertaking all necessary actions including all regulatory approvals required as per the provisions of the Act, to shift its registered office to the State of Maharashtra. The filing of the application and the petition pursuant to the Scheme by the Transferor Company 2 will be made in the jurisdiction of the NCLT where the registered office of the Transferor Company 2 is situated at the time of filing.
- 3.3 The Transferor Company 2 is engaged in the business of manufacturing steel and offers products such as hot rolled, cold rolled and coated steel, cold rolled full hard, galvanized coils and sheets, high tensile steel strips, color coated tiles, precision tubes, large diameter pipes, etc.



- 3.4 The Transferor Company 2 was admitted to the CIR Process vide order of the Adjudicating Authority dated July 26, 2017 under the provisions of the IBC Code. Pursuant to the initiation of the CIR Process and owing to the enormous potential for greater synergies and value enhancement for all stakeholders, the Transferee Company submitted its resolution plan for the resolution of Transferor Company 2 and was selected as the highest compliant resolution applicant by the committee of creditors constituted under the IBC Code. The resolution plan of the Transferee Company was subsequently approved by the Adjudicating Authority vide the IBC Order. Consequently, on May 18, 2018, the Transferor Company 1, a wholly owned subsidiary of the Transferee Company, acquired 72.65% of the equity share capital of the Transferor Company 2. In accordance with the provisions of the IBC Code and the IBC Order, the approved resolution plan is binding on the Transferor Company 2 and its employees, members, creditors, guarantors and other stakeholders involved.
- 3.5 The Transferor Company 1 currently holds 72.65% (seventy two point six five per cent) of the equity share capital of the Transferor Company 2 and the Transferor Company 2 is a subsidiary of the Transferor Company 1. The Transferee Company has also subscribed to (i) 1070 crores (one thousand seventy crores) non-convertible redeemable preference shares of face value of INR 10 (ten) each (bearing interest rate of 11.09% (eleven point zero nine percent)) of the Transferor Company 2, for a consideration aggregating to INR 10,700 crores (ten thousand seven hundred crores), in two tranches; and (ii) 900 crores (nine hundred crores) optionally convertible redeemable preference shares of face value INR 10 (ten) each (bearing interest rate of 8.89% (eight point eight nine percent)) of the Transferor Company 2, for a consideration aggregating to INR 9,000 crores (nine thousand crores), in two tranches. Consequently, the Transferee Company has acquired beneficial interest of more than 90% (ninety percent) in the total issued share capital of the Transferor Company 2.
- 3.6 The shares of the Transferor Company 2 are listed on the Stock Exchanges.

II. RATIONALE AND PURPOSE OF THE SCHEME

A. Commercial rationale for amalgamation of the Transferor Company 1 with the Transferee Company

1. The Transferor Company 1 is a wholly owned subsidiary of the Transferee Company and was incorporated *inter alia* for the purpose of completing the acquisition of Transferor Company 2 by way of the CIR Process prescribed under the IBC Code.
2. The Transferor Company 1 holds the equity investment in Transferor Company 2 and is its holding company. Pursuant to the completion of the proposed amalgamation of the Transferor Company 2 into and with the Transferee Company, there would no longer be a requirement for the Transferor Company 1 to exist as a separate legal entity. This amalgamation would also result in simplification of the group structure of the Transferee Company.



3. The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required to be carried out by the Transferor Company 1 and the Transferee Company.
4. The Transferor Company 1 being a wholly owned subsidiary of the Transferee Company is under the management of the Transferee Company and it would be advantageous to amalgamate the two entities to ensure focused management in the Transferee Company thereby resulting in efficiency of management and maximizing value to the shareholders.
5. This amalgamation will also result in significant reduction of administrative, operational, financial, and managerial and such other costs.

B. Commercial rationale for amalgamation of the Transferor Company 2 with the Transferee Company

1. The Transferor Company 2 and the Transferee Company are engaged in the business of manufacture and sale of steel and steel products. The amalgamation will ensure focused management in the combined entity thereby resulting in efficiency of management and maximizing value for the shareholders. Such restructuring will lead to simplification of group structure by eliminating multiple companies in similar business.
2. The proposed amalgamation of the Transferor Company 2 with the Transferee Company in accordance with the terms of this Scheme would enable both the companies to realize benefits of greater synergies between their businesses, yield beneficial results and pool financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing value to their shareholders and the stakeholders.
3. The proposed amalgamation will be beneficial to both the Transferor Company 2 and the Transferee Company in the following manner:
 - (i) **Operational integration and better facility utilisation:** The amalgamation in accordance with this Scheme will provide an opportunity for reduction of operational costs through transfer of intermediary products between the companies, better order loads for the business through pooling of orders, synergies from sales and production planning across the businesses.
 - (ii) **Efficient raw material procurement and reduced procurement costs:** Synergy of operations will be achieved as a result of sustained availability of raw materials as well as reduced procurement costs for Transferor Company 2. The proposed amalgamation would ensure iron ore security for Transferor Company 2 from the captive mines of the Transferee Company. Similarly, combined sourcing of other raw materials such as coke, coal, pellet, and limestone by both the Transferor Company 2 and the Transferee Company would result in reduction in overall costs of



procurement for the amalgamating companies. Besides, certain requirements of the Transferor Company 2 such as ferro alloys and scrap could be directly met by the Transferee Company's production and procurement arms.

- (iii) **Operational Efficiencies:** The amalgamation would result in synergy benefits arising out of single value chain thereby reducing costs and increasing operational efficiencies. Centralization of inventory, from raw material to finished goods and spares, may enable better efficiency, utilization and overall reduction in working capital. The proposed amalgamation would likely result in optimized power consumption, reduced costs, sharing of best practices, cross-functional learnings, better utilisation of common facilities and greater efficiency in debt and cash management.
- (iv) **Rationalization of Procurement & Logistics costs:** Consolidation and optimization of stockyards could significantly reduce logistics and distribution costs for both the Transferor Company 2 and the Transferee Company. Clubbing of shipments may help reduce shipping costs, port terminal charges and ocean freight.
- (v) **Enhancing Value in Marketing:** With an overlap in products across the Transferor Company 2 and the Transferee Company, the combined entity would be better positioned to service customer needs. The Transferor Company 2 could expand its existing core market in North-India using the strong distribution channel and dealer network of the Transferee Company. Further, the Transferor Company 2 could also have access to the Transferee Company's branded product portfolio and marketing capabilities. The Transferee Company would benefit from complementary product offerings of the Transferor Company 2, resulting in a strong presence across market segments. The proposed amalgamation will result in access to new markets and product offerings as well as increased export volumes.
- (vi) **Improving Customer Satisfaction and Services:** The proposed amalgamation would make it easier to address needs of customers by providing them uniform product and service experience, on-time supplies, improved service levels thereby improving customer satisfaction. With common credit management, the customers are expected to benefit from the channel financing benefits from the combined entity.
- (vii) **Improved safety, environment and sustainability practices:** Increased coverage of plant automation can be achieved across plants of the Transferor Company 2, by using the Transferee Company's information technology applications and systems.



- (viii) Thus, the proposed amalgamation is beneficial, advantageous and not prejudicial to the interests of the shareholders, creditors and other stakeholders of the Transferor Company 2 and the Transferee Company and is beneficial to the public at large.

In view of the aforesaid, the Board of Directors of the respective Companies have considered the proposed amalgamation of the entire undertaking and business of the Transferor Companies as a going concern into and with the Transferee Company to benefit the stakeholders of the respective Companies. Accordingly, the Board of Directors of the respective Companies have formulated this Scheme for the amalgamation of the Undertakings (*as defined hereinafter*) of the respective Transferor Companies into and with the Transferee Company pursuant to Sections 230 to 232 and other relevant provisions of the Act, and in accordance with section 2(1B) of IT Act (on a going concern basis) and other applicable Laws.

III. DEFINITIONS, INTERPRETATION, DATE OF TAKING EFFECT AND SHARE CAPITAL

1. DEFINITIONS

In this Scheme, unless repugnant to the meaning or context thereof, the following expressions shall have the meaning mentioned herein below:

- 1.1 **"Act"** means the Companies Act, 2013 and any rules, regulations, circulars or guidelines issued thereunder and shall, if the context so requires and as may be applicable, mean the Companies Act, 1956 and any rules, regulations, circulars or guidelines issued thereunder, as amended from time to time and shall include any statutory replacement or re-enactment thereof;
- 1.2 **"Adjudicating Authority"** shall have the meaning as prescribed under Section 5(1) of the IBC Code.
- 1.3 **"Applicable Law(s)"** or **"Law(s)"** means (a) applicable statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, listing agreements, notifications, guidelines or policies of any applicable country and/or jurisdiction; (b) writ, injunction, directions, directives, judgment, arbitral award, decree, orders or approvals of, or agreements with, any Governmental Authority or recognized stock exchange;
- 1.4 **"Appointed Date"** means April 1, 2019 or such other date as approved by the NCLT;
- 1.5 **"Board of Directors"** or **"Board"** means the board of directors of the respective Transferor Companies and/or the Transferee Company, as the context may require, and includes committees of the Board (if any) constituted for the implementation of this Scheme;



- 1.6 **"BSE"** means BSE Limited;
- 1.7 **"Companies"** means collectively, the Transferor Companies and the Transferee Company;
- 1.8 **"Consent"** means any notice, consent, approval, authorization, waiver, permit, permission, clearance, license, exemption, no objection certificate, registration, with, of, from or to any Person;
- 1.9 **"Effective Date"** means the date on which the last of conditions referred to in Clause 25.1 hereof have been fulfilled. Any reference in this Scheme to the date of "coming into effect of the/this Scheme" or "Scheme becoming effective" shall be construed accordingly;
- 1.10 **"Encumbrance"** means (i) any mortgage, charge (whether fixed or floating), pledge, lien, conditional sales contract, hypothecation, assignment, deed of trust, title retention, security interest or other encumbrance or interest of any kind securing, or conferring any priority of payment in respect of any obligation of any Person, including any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Law; (ii) a contract to give or refrain from giving any of the foregoing; (iii) any voting agreement, interest, option, right of first offer, refusal or transfer restriction in favour of any Person; and (iv) any adverse claim as to title, possession or use; and the terms **"Encumbered"**, **"Encumber"** shall be construed accordingly;
- 1.11 **"Governmental Approval"** means any Consent of any Governmental Authority;
- 1.12 **"Governmental Authority"** means any government authority, statutory authority, regulatory authority, agency, government department, board, commission, SEBI, Stock Exchanges, administrative authority, tribunal or court or any authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, having or purporting to have jurisdiction on behalf of the Republic of India or any state or province or other political subdivision thereof or any municipality, district or other subdivision thereof or in any other nation over the Transferor Companies and/ or the Transferee Company, as the context may require;
- 1.13 **"IT Act"** means the Indian Income-tax Act, 1961 and shall include any statutory modifications, re-enactments or amendments thereof for the time being in force;
- 1.14 **"NCLT"** means the relevant National Company Law Tribunal(s) having territorial jurisdiction in the state(s) in which the respective registered offices of the Companies are located or such other forum or authority as may be vested with any of the powers of the above mentioned tribunal under the Act for approving any scheme of arrangement, compromise or reconstruction of a company under Sections 230 to 232 of the Act;



- 1.15 **"NCLT Order"** means all order(s) passed by NCLT sanctioning the Scheme and includes any order passed by NCLT or any other Governmental Authority's order(s) for extension of time or condonation of delay in filing of the requisite forms with the Registrar of Companies in relation to this Scheme, if applicable.
- 1.16 **"NSE"** means National Stock Exchange of India Limited;
- 1.17 **"Person"** means any individual or other entity, whether a corporation, firm, company, joint venture, trust, association, organization, partnership or proprietorship, including any governmental agency or regulatory body;
- 1.18 **"Record Date"** means the date to be mutually fixed by the Board of Directors of the Transferor Company 2 and the Transferee Company, for the purpose of determining the shareholders of the Transferor Company 2 who shall be entitled to receive fully paid-up equity shares of the Transferee Company pursuant to and as contemplated under this Scheme;
- 1.19 **"Registrar of Companies" or "RoC"** means the relevant Registrar of Companies having territorial jurisdiction in the state(s) in which the respective registered offices of the Companies are located;
- 1.20 **"Rupees" or "Rs." or "INR"** means the Indian rupee which is the lawful currency of India;
- 1.21 **"Scheme of Amalgamation" or "this Scheme" or "the Scheme"** means this composite scheme of amalgamation in its present form as submitted to the NCLT or this Scheme with any amendment(s) or modification(s) if any, made by the shareholders of the respective Companies and accepted by the Boards of the respective Companies or such modification(s) as may be imposed by any Governmental Authority and/or directed to be made by the NCLT(s) while sanctioning the Scheme;
- 1.22 **"SEBI"** means Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992;
- 1.23 **"SEBI Circular"** means (i) Circular No. CFD/DIL3/CIR/2017/21 dated March 10, 2017, (ii) Circular No. CFD/DIL3/CIR/2017/26 dated March 23, 2017, (iii) Circular No. CFD/DIL3/CIR/2017/105 dated September 21, 2017, (iv) Circular No. CFD/DIL3/CIR/2018/2 dated January 3, 2018 issued by SEBI or any other circulars issued by SEBI applicable to schemes of arrangement from time to time;
- 1.24 **"Stock Exchanges"** means BSE and NSE collectively;
- 1.25 **"Transferee Company"** means Tata Steel Limited, a public limited company incorporated on August 26, 1907 under the provisions of the Indian Companies Act, 1882 and is a public limited company within the meaning of the Act;



- 1.26 **"Transferor Companies"** means collectively, the Transferor Company 1 and the Transferor Company 2;
- 1.27 **"Transferor Company 1"** means Barnipal Steel Limited, a public limited company incorporated on January 19, 2018 under the provisions of the Act;
- 1.28 **"Transferor Company 2"** means Tata Steel BSL Limited, a public limited company incorporated on January 7, 1983 under the provisions of the Companies Act, 1956 and is a public limited company within the meaning of the Act;
- 1.29 **"Undertaking 1"** means all the undertaking and the entire business of the Transferor Company 1 as a going concern as of the Appointed Date, including all its properties, investments, rights, approvals, and all its debts, outstandings, liabilities, duties, obligations and employees, if any, including, but not in any way limited to, the following:
- (a) all books, records, files, papers, whether in physical or electronic form;
 - (b) all the credits for taxes such as income tax, wealth tax, central sales tax, service tax, applicable state value added tax, goods and service tax including but not limited to the right to claim credit for indirect taxes such as CENVAT credit, VAT credit, GST credit, or any other input tax credit, advance tax, withholding tax/ TDS, taxes withheld/ paid in a foreign country, self-assessment tax, regular tax, minimum alternate tax, dividend distribution tax, securities transaction tax, deferred tax assets/ liabilities, accumulated losses under the IT Act and allowance for unabsorbed depreciation under the IT Act, losses brought forward and unabsorbed depreciation as per the books of account and tax refunds of the Transferor Company 1; and
 - (c) all contracts, agreements, memoranda of understanding, memoranda of undertakings, memoranda of agreements, memoranda of agreed points, other arrangements, undertakings, deeds, bonds, schemes, insurance covers and claims, clearances and other instruments of whatsoever nature and description, whether written, oral or otherwise and all rights, title, interests, claims and benefits thereunder.
- 1.30 **"Undertaking 2"** means all the undertaking and the entire business of the Transferor Company 2 as a going concern as of the Appointed Date, including all its assets, properties, investments, rights, approvals, licenses and powers, leasehold rights and all its debts, outstandings, liabilities, duties, obligations and employees including, but not in any way limited to, the following:



- (a) all the assets and properties (whether movable or immovable, tangible or intangible (including but not limited to rights, titles, interest, goodwill, etc.), real or personal, in possession or reversion, corporeal or incorporeal, present, future or contingent of whatsoever nature), whether or not recorded in the books of accounts of the Transferor Company 2 (including, without limitation, the freehold and leasehold properties of the Transferor Company 2 in states of Odisha, Tamil Nadu, Uttar Pradesh and Maharashtra), investments of all kinds (i.e., shares, scrips, stocks, bonds, debenture stocks, units or pass through certificates), furniture, fixtures, machinery, office equipment, computers, fixed assets, current assets (including, without limitation, all inventories, stock-in-trade or stock-in-transit, tools, plants, merchandise (including, raw materials, supplies, finished goods, and wrapping, supply, advertisement, promotional and packaging material), supplies, finished goods, packaging items, wherever located), cash and bank accounts (including bank balances), contingent rights or benefits, benefits of any deposits, receivables, advances or deposits paid by or deemed to have been paid by the Transferor Company 2, financial assets, vehicles, rights to use and avail of telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of assets or properties or other interest held in trust, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights, easements, privileges, liberties and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in the control of or vested in or granted in favour of or enjoyed by the Transferor Company 2 or in connection with or relating to the Transferor Company 2 and all other interests of whatsoever nature belonging to or in the ownership, power, possession or the control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Transferor Company 2, whether in India or abroad;
- (b) all permits, licenses, permissions, approvals, clearances, Consents, benefits, registrations, rights, entitlements, credits, certificates, awards, sanctions, allotments, quotas, no objection certificates, exemptions, concessions, subsidies, liberties and advantages including those relating to privileges, powers, facilities of every kind and description of whatsoever nature and the benefits thereto;
- (c) all contracts, agreements, purchase orders/ service orders, operation and maintenance contracts, memoranda of understanding, memoranda of undertakings, memoranda of agreements, memoranda of agreed points, minutes of meetings, bids, tenders, expressions of interest, letters of intent, supply contracts, hire and purchase arrangements, lease/ license agreements, tenancy rights, agreements/ panchnamas for right of way, equipment purchase agreements, agreements with customers, purchase and other agreements with the supplier/ manufacturer of goods/ service



providers, other arrangements, undertakings, deeds, bonds, schemes, insurance covers and claims, clearances and other instruments of whatsoever nature and description, whether written, oral or otherwise and all rights, title, interests, claims and benefits thereunder;

- (d) all applications (including hardware, software, licenses, source codes, parameterization and scripts), registrations, licenses, trade names, service marks, trademarks, copyrights, brands, patents, domain names, designs, intellectual property rights (whether owned, licensed or otherwise, and whether registered or unregistered), trade secrets, research and studies, technical knowhow, confidential information and all such rights of whatsoever description and nature;
- (e) all rights to use and avail telephones, telexes, facsimile, email, internet, leased line connections and installations, utilities, electricity and other services, reserves, provisions, funds, benefits of assets or properties or other interests held in trusts, registrations, contracts, engagements, arrangements of all kind, privileges and all other rights, easements, liberties and advantages of whatsoever nature and wheresoever situate belonging to or in the ownership, power or possession and in control of or vested in or granted in favour of or enjoyed by the Transferor Company 2 and all other interests of whatsoever nature belonging to or in the ownership, power, possession or control of or vested in or granted in favour of or held for the benefit of or enjoyed by the Transferor Company 2;
- (f) all the credits for taxes such as income tax, wealth tax, central sales tax, service tax, applicable state value added tax, goods and service tax including but not limited to the right to claim credit for indirect taxes such as CENVAT credit, VAT credit, GST credit, or any other input tax credit, advance tax, withholding tax/ TDS, taxes withheld/ paid in a foreign country, self-assessment tax, regular tax, minimum alternate tax, dividend distribution tax, securities transaction tax, deferred tax assets/liabilities, accumulated losses under the IT Act and allowance for unabsorbed depreciation under the IT Act, losses brought forward and unabsorbed depreciation as per the books of account and tax refunds of the Transferor Company 2;
- (g) all books, records, files, papers, engineering and process information, software licenses (whether proprietary or otherwise), test reports, computer programs, drawings, manuals, data, databases including databases for procurement, commercial and management, catalogues, quotations, sales and advertising materials, product registrations, dossiers, product master cards, lists of present and former customers and suppliers including service providers, other customer information, customer credit information, customer/ supplier pricing information, and all other books and records, whether in physical or electronic form;



- (h) all debts, secured and unsecured, liabilities including contingent liabilities, guarantees, duties, taxes and obligations of the Transferor Company 2 of whatsoever kind, nature and description and howsoever arising, raised, incurred or utilized;
- (i) all staff and employees and other obligations of whatsoever kind, including liabilities of the Transferor Company 2, with regard to their employees, with respect to the payment of gratuity, superannuation, pension benefits and provident fund or other compensation or benefits, if any, whether in the event of resignation, death, retirement, retrenchment or otherwise as on the Effective Date; and
- (j) all legal proceedings, including quasi-judicial, arbitral and other administrative proceedings, of whatsoever nature involving the Transferor Company 2;

1.31 **"Undertakings"** means collectively, the Undertaking 1 and the Undertaking 2.

2. INTERPRETATION

- 2.1 In addition to the above terms, certain terms may be defined elsewhere in this Scheme and wherever such terms are used in this Scheme, they shall have the meaning so assigned to them.
- 2.2 The terms referred to in this Scheme shall, unless defined otherwise in this Scheme or inconsistent with the context or meaning thereof, bear the meaning ascribed to them under the relevant statute/legislation.
- 2.3 All references in this Scheme to statutory provisions shall be construed as meaning and including references to:
 - 2.3.1 any statutory modification, consolidation or re-enactment made after the date of approval of this Scheme by the Board of Directors of the respective Companies and for the time being in force;
 - 2.3.2 all subordinate legislation made from time to time under that provision (whether or not amended, modified, re-enacted or consolidated);
 - 2.3.3 all statutory instruments or orders made pursuant to a statutory provision; and
 - 2.3.4 any statutory provisions of which these statutory provisions are a consolidation, re-enactment or modification.
- 2.4 Words denoting the singular shall include the plural and words denoting any gender shall include all genders.



- 2.5 Headings, subheadings, titles, subtitles to clauses, sub-clauses, sections and paragraphs are for information only and shall not form part of the operative provisions of this Scheme or the schedules hereto and shall be ignored in construing the same.
- 2.6 References to clauses, and schedules are, unless the context otherwise requires, references to clauses, and schedules to this Scheme.
- 2.7 Reference to days, months and years are to calendar days, calendar months and calendar years as per the English calendar, respectively.
- 2.8 Any reference to "writing" shall include printing, typing, lithography and other means of reproducing words in visible form.
- 2.9 The words "include" and "including" are to be construed without limitation.
- 2.10 Where a wider construction is possible, the words "other" and "otherwise" shall not be construed ejusdem generis with any foregoing words.

3. DATE OF TAKING EFFECT

- 3.1 The Scheme shall be effective from the Appointed Date mentioned herein but shall be operative from the Effective Date. Upon the sanction of this Scheme and upon this Scheme becoming effective pursuant to Clause 25 of this Scheme, the following shall be deemed to have occurred and become effective and operative, only in the sequence and in the order mentioned hereunder:
- 3.1.1 The amalgamation of the Undertaking 1 of the Transferor Company 1 into and with the Transferee Company in accordance with Part II and Part IV (as applicable) of the Scheme shall be deemed to have taken effect.
- 3.1.2 The equity shares issued by the Transferor Company 1 to the Transferee Company shall stand cancelled in their entirety, which shall be effected as a part of the Scheme itself and not in accordance with Section 66 of the Act and in the manner stipulated in Part II of the Scheme.
- 3.1.3 Dissolution of the Transferor Company 1 without winding up.
- 3.1.4 The amalgamation of the Undertaking 2 of the Transferor Company 2 into the Transferee Company in accordance with Part III and Part IV (as applicable) of the Scheme shall be deemed to have taken effect.



- 3.1.5 The entire equity share capital and the preference share capital of the Transferor Company 2 including the equity shares issued by the Transferor Company 2 to the Transferor Company 1 and the preference shares issued by the Transferor Company 2 to the Transferee Company shall stand cancelled in its entirety, which shall be effected as a part of the Scheme and not in accordance with Section 66 of the Act and in the manner stipulated in Part III of the Scheme.
- 3.1.6 Issue and allotment of fully paid up equity shares of the Transferee Company to the equity shareholders of the Transferor Company 2 as of the Record Date in accordance with Part III of this Scheme.
- 3.1.7 Dissolution of the Transferor Company 2 without winding up.

4. SHARE CAPITAL

- 4.1 The share capital of the Transferee Company as on March 31, 2019, is as follows:

Particulars	Amount in INR (in crores)
Authorised:	
1,75,00,00,000 ordinary shares of INR 10 each	1,750.00
35,00,00,000 "A" ordinary shares of INR 10 each	350.00
2,50,00,000 cumulative redeemable preference shares of INR 100 each	250.00
60,00,00,000 cumulative convertible preference shares of INR 100 each	6,000.00
Total	8,350.00
Issued:	
1,12,75,20,570 ordinary shares of INR 10 each	1127.52
7,76,97,280 ordinary shares of INR 10 each (partly paid up of INR 2.504)	77.70
Total	1,205.22



Subscribed and paid up:	
112,64,89,680 ordinary shares of INR 10 each fully paid up	1,126.48
776,36,705 ordinary shares of INR 10 each (INR 2.504 each paid up)	19.44
Amount paid up on 3,89,516 Ordinary Shares forfeited	0.20
Total	1,146.12

4.2 The share capital of the Transferor Company 1 as on March 31, 2019 is as follows:

Particulars	Amount in INR (in crores)
Authorised:	
1050,00,00,000 equity shares of INR 10 each	10,500.00
100,00,00,000 optionally convertible redeemable preference shares of INR 100 each	1,000.00
100,00,00,000 non-convertible redeemable preference shares of INR 100 each	1,000.00
Total	12,500.00
Issued, Subscribed and Paid-up:	
2,58,895,798 equity shares of INR 10 each	258.89
Total	258.89



4.3 The share capital of the Transferor Company 2 as on March 31, 2019 is as follows:

Particulars	Amount in INR (in crores)
Authorised:	
4650,00,00,000 equity shares of INR 2 each	9,300.00
2,20,00,00,000 preference shares of INR 100 each	220.00
1200,00,00,000 non-convertible redeemable preference shares of INR 10 each	12,000.00
1200,00,00,000 optionally convertible redeemable preference shares of INR 10 each	12,000.00
Total	33,520.00
Issued	
109,75,30,242 equity Shares of INR 2 each	219.50
1070,00,00,000 non-convertible redeemable preference shares of INR 10 each	10,700.00
900,00,00,000 optionally convertible redeemable preference shares of INR 10 each	9,000.00
Total	19,919.50
Subscribed and Paid up	
109,34,39,768 equity shares of INR 2 each	218.68
1070,00,00,000 non-convertible redeemable preference shares of INR 10 each	10,700.00
900,00,00,000 optionally convertible redeemable preference shares of INR 10 each	9,000.00
Total	19,918.68



PART II

AMALGAMATION OF THE TRANSFEROR COMPANY 1 INTO AND WITH THE TRANSFeree COMPANY

5. AMALGAMATION OF THE UNDERTAKING 1

- 5.1 With effect from the Appointed Date, the entire Undertaking 1 of the Transferor Company 1 shall, subject to the terms and conditions of this Scheme and, without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company so as to become the undertaking of the Transferee Company by virtue of and in the following manner:
- 5.1.1 With effect from the Appointed Date, all the properties, rights, interests, benefits, privileges, outstanding loans and advances, if any, bank balances and deposits, if any and investments (including investments in shares and any other securities), of the Transferor Company 1 shall also without any further act, instrument or deed stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company.
- 5.1.2 With effect from the Appointed Date, all debts, liabilities, duties and obligations of every kind, nature and description of the Transferor Company 1 shall without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in, the Transferee Company, so as to become on and from the Appointed Date, the debts, liabilities, duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company 1. Further, it shall not be necessary to obtain the Consent of any Person who is a party to a contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause. Necessary modification, as may be required would be carried out to the debt instrument(s) issued by the Transferor Company 1, if any.
- 5.1.3 On and from the Effective Date, and thereafter, the Transferee Company shall be entitled to operate the bank accounts, if any, of the Transferor Company 1.
- 5.1.4 On and from the Effective Date, the security creation, borrowing and investment limits of the Transferee Company under the Act shall be increased to the extent of the security creation, borrowing and investment limits of the Transferor Company 1, such limits being incremental to the existing limits of the Transferee Company.



- 5.1.5 Any corporate approvals obtained by the Transferor Company 1, whether for the purposes of compliance or otherwise, shall stand transferred to the Transferee Company and such corporate approvals and compliance shall be deemed to have been obtained and complied with by the Transferee Company.
- 5.1.6 All taxes (including but not limited to advance tax, self-assessment tax, regular tax, tax deducted at source, minimum alternate tax credits, dividend distribution tax, securities transaction tax, taxes withheld/ paid in a foreign country, value added tax, sales tax, service tax, goods and service tax etc.) paid / payable by or refunded / refundable to the Transferor Company 1 with effect from the Appointed Date, including all or any refunds or claims shall be treated as the tax liability or refunds/claims, etc. as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, accumulated losses and allowance for unabsorbed depreciation as per Section 72A of the IT Act, losses brought forward and unabsorbed depreciation as per the books of account, deductions otherwise admissible such as under Sections 40, 40A, 43B, etc. of the IT Act, exemptions, credits, holidays, remissions, reductions, service tax input credits, GST input credits etc., as would have been available to the Transferor Company 1, shall pursuant to this Scheme becoming effective, be available to the Transferee Company. This clause is to be read along with Clause 19 of this Scheme.
- 5.1.7 Any third party or Governmental Authority required to give effect to any provisions of this Scheme, shall take on record the NCLT Order sanctioning the Scheme on its file and duly record the necessary substitution or endorsement in the name of the Transferee Company as successor in interest, pursuant to the sanction of this Scheme by NCLT, and upon this Scheme becoming effective. For this purpose, the Transferee Company shall file certified copies of such NCLT Order and if required file appropriate applications or forms with relevant authorities concerned for statistical and information purposes only and there shall be no break in the validity and enforceability of Governmental Approvals, Consents, exemptions, registrations, no-objection certificates, permits quotas, rights, entitlements, licenses (including the licenses granted by any Governmental Authorities for the purpose of carrying on its business or in connection therewith), and certificates of every kind and description of whatsoever nature.
- 5.1.8 For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that with effect from the Appointed Date, all Consents, permissions, certificates, clearances, authorities, power of attorneys given by, issued to or in favour of the Transferor Company 1 shall stand transferred to the Transferee Company, as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the Transferee Company shall be bound by the terms thereof, the obligations and duties there under, and the rights and benefits under the same shall be available to the Transferee Company.



- 5.1.9 For avoidance of doubt and without prejudice to the generality of any applicable provisions of this Scheme, it is clarified that in order to ensure (i) implementation of the provisions of the Scheme; and (ii) continued vesting of the benefits, exemptions available to the Transferor Company 1 in favour of the Transferee Company, the Board of Directors of the Transferor Company 1 and the Transferee Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable and the same shall be considered as giving effect to the NCLT Order and shall be considered as an integral part of this Scheme. Further, the Transferee Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable, on behalf of the Transferor Company 1 and to carry out or perform all such formalities and/or compliances, as required for the purpose of implementation of the provisions of the Scheme.

6. CONSIDERATION

- 6.1 As the Transferor Company 1 is a wholly-owned subsidiary of the Transferee Company, no consideration shall be payable pursuant to the amalgamation of the Transferor Company 1 into and with the Transferee Company, and the equity shares held by the Transferee Company on its own and together with its nominees in the Transferor Company 1, shall stand cancelled without any further act, application or deed. Accordingly, the investment in the shares of the Transferor Company 1, appearing in the books of accounts of the Transferee Company shall, without any further act or deed, stand cancelled.

7. ACCOUNTING TREATMENT

- 7.1 Upon coming into effect of this Scheme, the Transferee Company shall account for the amalgamation of the Transferor Company 1 in its books of accounts in accordance with "Pooling of Interest Method" of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by Institute of Chartered Accountants of India (ICAI).

8. LEGAL PROCEEDINGS

- 8.1 Upon the coming into effect of this Scheme, if any suit, appeal or other proceeding of whatsoever nature by or against the Transferor Company 1 be pending as on the Appointed Date, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking 1 or anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company 1, if this Scheme had not been made.



9. SAVING OF CONCLUDED TRANSACTIONS

- 9.1 Subject to the terms of the Scheme, the amalgamation of the Undertaking 1 and continuance of proceedings by or against the Transferee Company, as provided herein, shall not affect any transactions or proceedings already concluded by the Transferor Company 1 before the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by and/or on behalf of the Transferor Company 1 in relation to the Undertaking 1 as acts, deeds and things done and executed by and on behalf of the Transferee Company.



PART III

AMALGAMATION OF THE TRANSFEROR COMPANY 2 INTO AND WITH THE TRANSFeree COMPANY

10. AMALGAMATION OF THE UNDERTAKING 2

- 10.1 With effect from the Appointed Date, the Undertaking 2 shall, subject to the terms and conditions of this Scheme and, without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in the Transferee Company, as a going concern, so as to become the undertakings of the Transferee Company by virtue of and in the following manner:
- 10.1.1 All assets of the Transferor Company 2 that are movable in nature and/or otherwise capable of transfer by physical or constructive delivery, novation and/or by endorsement and delivery or by operation of law shall be vested in and/or deemed to be vested in the Transferee Company from the Appointed Date. Upon this Scheme becoming effective, the title of such property shall be deemed to have been mutated and recognised as that of the Transferee Company, absolutely and forever, from the Appointed Date.
- 10.1.2 In respect of such of the assets of the Transferor Company 2 other than those referred to in Clause 10.1.1 above, including investment in shares or any other securities, actionable claims, outstanding loans and advances, earnest monies, receivables, bills, credits, if any, recoverable in cash or in kind or for value to be received all kind of banking accounts including but not limited to current and saving accounts, term deposits, deposits, if any, with Governmental Authorities and other authorities and bodies, shall, without any further act, instrument or deed, be and stand transferred to and vested in the Transferee Company and/or be deemed to be transferred to and vested in the Transferee Company as on the Appointed Date. The Transferee Company shall upon sanction of the Scheme be entitled to the delivery and possession of all documents of title of such movable property in this regard. The Transferee Company (without it being obliged to do so), if it deems appropriate, may give notice in such form as it deems fit and proper, to each such debtor or obligor or any other Person, that pursuant to the sanction of the Scheme, such investment, debt, loan, advance, claim, bank balance, deposit or other asset be aid or made good or held on account of the Transferee Company as the person entitled thereto, to the end and intent that the right of the Transferor Company 2, to recover or realize all such debts (including the debts payable by such debtor or obligor or any other Person to the Transferor Company 2) stands transferred and assigned to the Transferee Company and that appropriate entries should be passed in the books of accounts of the relevant debtors or obligors or other Persons to record such change.



- 10.1.3 With effect from the Appointed Date, all immovable properties of the Transferor Company 2, including land together with the heavy equipment, plant & machinery, buildings and structures standing thereon or embedded to the land and rights and interests in immovable properties of the Transferor Company 2, whether freehold or leasehold or licensed or otherwise and all documents of title, rights, security deposits and easements in relation thereto shall stand vested in and/or be deemed to have been vested in the Transferee Company on the same terms and conditions, by operation of Law pursuant to the sanctioning of the Scheme. Such assets shall stand vested in the Transferee Company and shall be deemed to be and become the property as an integral part of the Transferee Company by operation of Law. The Transferee Company shall upon the NCLT Order sanctioning the Scheme and upon the Scheme becoming effective, be always entitled to all the rights and privileges attached in relation to such immovable properties including refund of any security deposits and shall be liable to pay appropriate rent, rates and taxes and fulfill all obligations in relation thereto or as applicable to such immovable properties. Upon this Scheme becoming effective, the title to such properties shall be deemed to have been mutated and recognised as that of the Transferee Company and the mere filing thereof with the appropriate registrar or sub-registrar or with the relevant Governmental Authority shall suffice as record of continuing titles with the Transferee Company and shall be constituted as a deemed mutation and substitution thereof. The Transferee Company shall upon the Scheme becoming effective be entitled to the delivery and possession of all documents of title to such immovable property in this regard. It is hereby clarified that all the rights, title and interest of the Transferor Company 2 in any leasehold properties shall without any further act, instrument or deed, be vested in or be deemed to have been vested in the Transferee Company.
- 10.1.4 With effect from the Appointed Date, all assets, brands, trademarks, rights, title, interests and investments of the Transferor Company 2 shall also without any further act, instrument or deed stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company.
- 10.1.5 With effect from the Appointed Date, all debts (secured and unsecured), liabilities, bonds, debentures (including contingent liabilities), duties and obligations of every kind, nature and description of the Transferor Company 2 shall without any further act, instrument or deed, be and stand transferred to and vested in and/or be deemed to have been and stand transferred to and vested in, the Transferee Company, so as to become on and from the Appointed Date, the debts, liabilities, bonds, debentures (including contingent liabilities), duties and obligations of the Transferee Company on the same terms and conditions as were applicable to the Transferor Company 2. Further, it shall not be necessary to obtain the Consent of any Person who is a party to contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this Clause. Necessary modification, as may be required would be carried out to the debt instrument issued by the Transferor Company 2, if any.



- 10.1.6 Upon this Scheme becoming effective, the secured creditors of the Transferor Company 2 and/or other holders of Encumbrance over the properties of the Transferor Company 2 shall be entitled to Encumbrance only in respect of the properties, assets, rights, benefits and interest of the Transferor Company 2, as existing immediately prior to the amalgamation of the Transferor Company 2 with the Transferee Company and the secured creditors of the Transferee Company and/or other holders of Encumbrance over the properties of the Transferee Company shall be entitled to Encumbrance only in respect of the properties, assets, rights, benefits and interest of the Transferee Company, as existing immediately prior to the amalgamation of the Transferor Company 2 with the Transferee Company. It is hereby clarified that pursuant to the amalgamation of the Transferor Company 2 with the Transferee Company, (a) the secured creditors of the Transferor Company 2 and/or other holders of Encumbrance over the properties of the Transferor Company 2 shall not be entitled to any additional Encumbrance over the properties, assets, rights, benefits and interest of the Transferee Company and therefore, such assets which are not currently Encumbered shall remain free and available for creation of any Encumbrance thereon in future in relation to any current or future indebtedness of the Transferee Company; and (b) the secured creditors of the Transferee Company and/or other holders of Encumbrance over the properties of the Transferee Company shall not be entitled to any additional Encumbrance over the properties, assets, rights, benefits and interest of the Transferor Company 2 and therefore, such assets which are not currently Encumbered shall remain free and available for creation of any Encumbrance thereon in future in relation to any current or future indebtedness of the Transferee Company.
- 10.1.7 On and from the Effective Date, and thereafter, the Transferee Company shall be entitled to operate all bank accounts, demat accounts, if any, of the Transferor Company 2 and realize all monies and complete and enforce all pending contracts and transactions and to accept stock returns and issue credit notes in relation to the Transferor Company 2 in the name of the Transferee Company in so far as may be necessary until the transfer of rights and obligations of the Transferor Company 2 to the Transferee Company under this Scheme have been formally given effect to under such contracts and transactions.
- 10.1.8 With effect from the Effective Date, the security creation, borrowing and investment limits of the Transferee Company under the Act shall be increased to the extent of the security creation, borrowing and investment limits of the Transferor Company 2, such limits being incremental to the existing limits of the Transferee Company.
- 10.1.9 Any corporate approvals obtained by the Transferor Company 2, whether for the purposes of compliance or otherwise, shall stand transferred to the Transferee Company and such corporate approvals and compliance shall be deemed to have been obtained and complied with by the Transferee Company.



- 10.1.10 All Governmental Approvals and other Consents, permissions, quotas, rights, authorizations, entitlements, no objection certificates and licenses, including those relating to tenancies, privileges, powers and facilities of every kind and description of whatsoever nature, to which the Transferor Company 2 are a party or to the benefit of which the Transferor Company 2 may be entitled to use or which may be required to carry on the operations of the Transferor Company 2, and which are subsisting or in effect immediately prior to the Effective Date, shall be, and remain, in full force and effect in favour of or against the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company 2, the Transferee Company had been a party, a beneficiary or an obligee thereto and shall be appropriately mutated by the relevant Governmental Authorities in favour of the Transferee Company. In so far as the various incentives, service tax benefits, subsidies (including applications for subsidies), rehabilitation schemes, grants, special status, rights, and other benefits or privileges enjoyed, granted by any Governmental Authority or by any other Person, or availed of by the Transferor Company 2 is concerned, the same shall, without any further act or deed, vest with and be available to the Transferee Company on the same terms and conditions as are available to the Transferor Company 2.
- 10.1.11 With effect from the Appointed Date, all registrations, licenses, trademarks, brands, copyrights, domain names, applications for copyrights, trade-names, trademarks, and any other intellectual property pertaining to the Transferor Company 2, if any, shall stand vested in the Transferee Company without any further act, instrument or deed, upon the sanction of the Scheme.
- 10.1.12 All taxes (including but not limited to advance tax, self-assessment tax, regular tax, tax deducted at source, minimum alternate tax credits, dividend distribution tax, securities transaction tax, taxes withheld/ paid in a foreign country, value added tax, sales tax, service tax, goods and service tax etc.) paid / payable by or refunded / refundable to the Transferor Company 2 with effect from the Appointed Date, including all or any refunds or claims shall be treated as the tax liability or refunds/ claims, etc. as the case may be, of the Transferee Company, and any tax incentives, advantages, privileges, accumulated losses and allowance for unabsorbed depreciation as per Section 72A of the IT Act, losses brought forward and unabsorbed depreciation as per books of account, deductions otherwise admissible such as under Section 40, 40A, 43B, etc. of the IT Act, exemptions, credits, holidays, remissions, reductions, service tax input credits, GST input credits etc., as would have been available to the Transferor Company 2, shall pursuant to this Scheme becoming effective, be available to the Transferee Company. This clause to be read along with Clause 19 of this Scheme.



- 10.1.13 Any third party or Governmental Authority required to give effect to any provisions of this Scheme, shall take on record the NCLT Order sanctioning the Scheme on its file and duly record the necessary substitution or endorsement in the name of the Transferee Company as successor in interest, pursuant to the sanction of this Scheme by NCLT, and upon this Scheme becoming effective. For this purpose, the Transferee Company shall file certified copies of such NCLT Order and if required file appropriate applications or forms with relevant authorities concerned for statistical and information purposes only and there shall be no break in the validity and enforceability of Governmental Approvals, Consents, exemptions, registrations, no-objection certificates, permits quotas, rights, entitlements, licenses (including the licenses granted by any Governmental Authorities for the purpose of carrying on its business or in connection therewith), and certificates of every kind and description of whatsoever nature.
- 10.1.14 For the avoidance of doubt and without prejudice to the generality of the foregoing, it is clarified that with effect from the Appointed Date, all Consents, permissions, certificates, clearances, authorities, power of attorneys given by, issued to or in favour of the Transferor Company 2 shall stand transferred to the Transferee Company, as if the same were originally given by, issued to or executed in favour of the Transferee Company, and the Transferee Company shall be bound by the terms thereof, the obligations and duties there under, and the rights and benefits under the same shall be available to the Transferee Company.
- 10.1.15 The Transferee Company shall, at any time after coming into effect of this Scheme, in accordance with the provisions hereof, if so required under any Applicable Law or otherwise, execute appropriate deeds of confirmation or other writings or arrangements with any party to any contract or arrangement in relation to which the Transferor Company 2 have been a party, including any filings with the regulatory authorities, in order to give formal effect to the above provisions. The Transferee Company shall for this purpose, under the provisions hereof, be deemed to have been authorized to execute any such writings on behalf of the Transferor Company 2 and to carry out or perform all such formalities or compliances referred to above on the part of the Transferor Company 2.
- 10.1.16 With effect from the Effective Date, all inter se contracts solely between the Transferor Company 2 and the Transferee Company shall stand cancelled and cease to operate, and appropriate effect shall be given to such cancellation and cessation in the books of accounts and records of the Transferee Company.



10.1.17 With effect from the Effective Date, there will be no accrual of income or expense on account of any transactions, including *inter alia* any transactions in the nature of sale or transfer of any goods, materials or services, between the respective Transferor Company 2 and the Transferee Company. For avoidance of doubt, it is hereby clarified that with effect from the Effective Date, there will be no accrual of interest or other charges in respect of any inter se loans, deposits or balances between the respective Transferor Company 2 and the Transferee Company.

10.1.18 For avoidance of doubt and without prejudice to the generality of any applicable provisions of this Scheme, it is clarified that in order to ensure (i) implementation of the provisions of the Scheme; (ii) uninterrupted transfer of the relevant Consents, approvals, patents, permissions, licenses, registrations, certificates etc.; and (iii) continued vesting of the benefits, exemptions available to the Transferor Company 2 in favour of the Transferee Company, the Board of Directors of the Transferor Company 2 and the Transferee Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable and the same shall be considered as giving effect to the NCLT Order and shall be considered as an integral part of this Scheme. Further, the Transferee Company shall be deemed to be authorized to execute or enter into necessary documentations with any regulatory authorities or third parties, if applicable, on behalf of the Transferor Company 2 and to carry out or perform all such formalities or compliance required for the purpose of implementation of the provisions of the Scheme.

10.1.19 For avoidance of doubt and without prejudice to the generality of any applicable provisions of this Scheme, it is clarified that in order to ensure the smooth transition and sales of products and inventory of the Transferor Company 2 manufactured and/or branded and/or labelled and/or packed in the name of the Transferor Company 2 prior to the Effective Date, the Transferee Company shall have the right to own, use, market, sell, exhaust or to in any manner deal with any such products and inventory (including packing material) pertaining to the Transferor Company 2 at manufacturing locations or warehouses or retail stores or elsewhere, without making any modifications whatsoever to such products and/or their branding, packing or labelling. All invoices/ payment related documents pertaining to such products and inventory (including packing material) may be raised in the name of the Transferee Company after the Effective Date.

11. CONTRACTS, DEEDS AND OTHER INSTRUMENTS

11.1 Upon the coming into effect of this Scheme and subject to the provisions of this Scheme, all contracts, deeds, bonds, understandings whether written or oral and other instruments, if any, of whatsoever nature to which the Transferor Company 2 is a party or to the benefit of which the Transferor Company 2 may be eligible and which are subsisting or having effect on the Appointed Date, without any further act, instrument or deed, shall be in full force and effect



against or in favour of the Transferee Company, as the case may be, and may be enforced by or against the Transferee Company as fully and effectively as if, instead of the Transferor Company 2, the Transferee Company had been a party or beneficiary or obligee thereto.

- 11.2 Without prejudice to other provisions of this Scheme and notwithstanding the fact that the vesting of the Undertaking 2 occurs by virtue of this Scheme itself, the Transferee Company may, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any Applicable Law or otherwise, execute deeds of confirmation in favour of any party to any contract or arrangement to which the Transferor Company 2 is a party as may be necessary to be executed in order to give formal effect to the above provisions. The Transferee Company shall be deemed to be authorised to execute any such writings on behalf of the Transferor Company 2 and to carry out or perform all formalities or compliances required for the purposes referred to above on the part of the Transferor Company 2.

12. STAFF, EMPLOYEES & WORKMEN

- 12.1 Upon the coming into effect of this Scheme, all the employees on the payroll of the Transferor Company 2, engaged in or in relation to the Undertaking 2, as on the Effective Date, shall become and be deemed to have become the employees of the Transferee Company with effect from the Appointed Date or their respective joining date, whichever is later, without any break or interruption of service and with the benefit of continuity of service on terms and conditions which are not less favourable than the terms and conditions as were applicable.
- 12.2 The Transferee Company agree that the service of all the employees of the Transferor Company 2 immediately prior to the Effective Date shall be taken into account for the purpose of retirement benefits to which they may be eligible in the Transferor Company 2 immediately prior to the coming into effect of this Scheme. The Transferee Company further agrees that for the purpose of payment of any retrenchment compensation, gratuity, grants, stock options or other terminal benefits, such past service with the Transferor Company 2, shall also be taken into account and agrees and undertakes to pay the same as and when payable.
- 12.3 Upon the coming into effect of this Scheme, the Transferee Company shall make all the necessary contributions for such transferred employees and deposit the same in provident fund, gratuity fund or superannuation fund or any other special fund or staff welfare scheme or any other special scheme under the Applicable Law. The Transferee Company will also file relevant intimations to the statutory authorities concerned who shall take the same on record and substitute the name of the Transferor Company 2 for the Transferee Company.



- 12.4 Subject to the Applicable Law, the existing provident fund, gratuity fund and pension and/or superannuation fund/ trusts, retirement funds or employees state insurance schemes or pension scheme or employee deposit linked insurance scheme or any other benefits, if any, created by the Transferor Company 2 for its employees, shall be continued on the same terms and conditions and will be transferred to the necessary funds, schemes or trusts of the Transferee Company without any separate act, deed or approval and till the time such necessary funds, schemes or trusts are created by the Transferee Company, all contributions shall continue to be made to the respective existing funds, schemes or trusts of the Transferor Company 2.

13. CONSIDERATION

- 13.1 Upon coming into effect of this Scheme, and in consideration of the amalgamation of the Undertaking 2 in the Transferee Company, the Transferee Company shall without any further application, act, instrument or deed, issue and allot to all the equity shareholders (other than the Transferor Company 1) of the Transferor Company 2, whose names appear in the register of members as on the Record Date, fully paid up equity shares, free and clear from all Encumbrances together with all rights and benefits attaching thereto in the following share exchange ratio ("**Share Exchange Ratio**"):

1 (One) equity shares of INR 10/- each credited as fully paid-up of the Transferee Company for every 15 (Fifteen) equity shares of INR 2/- each fully paid-up held by such equity shareholder in the Transferor Company 2.

- 13.2 Mr. Sujal Anil Shah and Mr. Vikrant Jain, Independent Chartered Accountants, appointed by the Transferor Company 2 and the Transferee Company, respectively, have issued their respective reports on the Share Exchange Ratio adopted under the Scheme (collectively "**Valuation Reports**"). RBSA Capital Advisors LLP and EY Merchant Banking Services Private Limited, SEBI Registered Category 1 Merchant Bankers, appointed by the Transferor Company 2 and the Transferee Company, respectively, have provided their respective fairness opinions on the Share Exchange Ratio in compliance with the applicable provisions of the SEBI Circular (collectively "**Fairness Opinions**"). The Valuation Reports and the Fairness Opinions on the Share Exchange Ratio have been duly considered by the respective Board of both, the Transferor Company 2 and the Transferee Company.
- 13.3 The equity shares to be issued pursuant to Clause 13.1 above, shall be issued to the shareholders of the Transferor Company 2 in such form, physical or dematerialized as permitted under Applicable Law.



- 13.4 The equity shares to be issued by the Transferee Company pursuant to Clause 13.1 above in respect of such equity shares of Transferor Company 2 which are held in abeyance under the provisions of Section 126 of the Act (erstwhile Section 206A of the Companies Act, 1956) or otherwise shall, pending allotment or settlement of the dispute by order of a court or otherwise, also shall be kept in abeyance by the Transferee Company.
- 13.5 In the event of there being any pending share transfers, whether lodged or outstanding, of any shareholders of the Transferor Company 2, the Board of Directors of the Transferor Company 2, shall be empowered prior to the Record Date, to effectuate such transfers in the Transferor Company 2 as if such changes in registered holders were operative as on the Record Date, in order to remove any difficulties arising to the transferors of the shares issued by the Transferee Company pursuant to Clause 13.1 above after the Scheme is effected. The Board of Directors of the Transferee Company shall be empowered to remove such difficulties as may arise in the course of implementation of this Scheme and registration of new members in the Transferee Company on account of difficulties faced in the transition period.
- 13.6 The equity shares issued and allotted by the Transferee Company, in terms of Clause 13.1 above, shall be subject to the provisions of the Memorandum and Articles of Association of the Transferee Company and shall rank *pari passu* in all respects with the existing equity shares of the Transferee Company including as regards entitlement to dividend and other distributions and repayment of capital declared or paid on or after the Effective Date and voting and other rights. Further, the Transferee Company shall, if required, take all necessary steps for increase of authorized share capital for issue of the equity shares pursuant to Clause 13.1 above.
- 13.7 At the time of issue and allotment of equity shares in terms of Clause 13.1 above, the Board of Directors of the Transferee Company shall consolidate all fractional entitlements, and allot equity shares in lieu thereof to a corporate trustee or such other authorized representative(s) as the Board of Directors of the Transferee Company shall appoint in this behalf, who shall hold the equity shares issued in the Transferee Company, in trust on behalf of the equity shareholders entitled to fractional entitlements with the express understanding that such corporate trustee or other authorized representative(s) shall sell the same in the market at such time or times and at such price or prices and to such person or persons, as it/he/they may deem fit, and pay to the Transferee Company, the net sale proceeds thereof, whereupon the Transferee Company shall distribute such net sale proceeds (after deduction of applicable taxes, if any), to the equity shareholders in proportion to their respective fractional entitlements. The Board of Directors of the Transferee Company, if it deems necessary, in the interests of allottees, approve such other method in this behalf as it may, in its absolute discretion, deem fit.



- 13.8 Upon the Scheme becoming effective and upon the equity shares allotted and issued in terms of Clause 13.1 above, the equity shares of the Transferor Company 2, both in electronic form and in the physical form, shall be deemed to have been automatically cancelled and be of no effect on and from the Record Date.
- 13.9 The equity shares allotted and issued in terms of Clause 13.1 above, shall be listed and/or admitted to trading on the Stock Exchanges, where the equity shares of the Transferee Company are listed and/or admitted to trading; subject to the Transferee Company obtaining the requisite Governmental approvals pertaining to their listing.
- 13.10 It is clarified that upon the approval of this Scheme by the shareholders and/or the creditors of the respective Transferor Company 2 and the Transferee Company under Sections 230 to 232 of the Act, the shareholders and/or the creditors shall be deemed to have approved this Scheme under Sections 13, 14, 62, 188 and any other applicable provisions under the Act and the SEBI Circulars, and that no separate approval from or any shareholders and/or the creditors nor any further action, to that extent shall be required to be sought or undertaken by the Transferor Company 2 and the Transferee Company respectively, for the matters specified in this Scheme.

14. ACCOUNTING TREATMENT

- 14.1 Upon coming into effect of this Scheme, the Transferee Company shall account for the amalgamation of the Transferor Company 2 in its books of accounts in accordance with "Pooling of Interest Method" of accounting as laid down in Ind AS 103 (Business Combinations) and relevant clarifications issued by Institute of Chartered Accountants of India (ICAI).

15. LEGAL PROCEEDINGS

- 15.1 Upon coming into effect of this Scheme, if any suit, appeal or other legal proceeding including quasi-judicial, arbitral and other administrative proceedings, if any, of whatsoever nature by or against the Transferor Company 2 be pending and/or arising on or before the Appointed Date, the same shall not abate or be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking 2 or anything contained in this Scheme, but the said suit, appeal or other legal proceedings may be continued, prosecuted and enforced, as the case may be, by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company 2, if this Scheme had not been made.



The Transferee Company undertakes to have all legal or such other proceedings specified in this Clause 15.1, initiated by or against the Transferor Company 2, transferred to its name and to have such proceedings continued, prosecuted and enforced by or against the Transferee Company, as the case may be. Following the Effective Date, the Transferee Company may initiate any legal proceedings for and on behalf of the Transferor Company 2.

16. CANCELLATION OF SHARES

- 16.1 Upon coming into effect of this Scheme, the shares of the Transferor Company 2 held by the Transferee Company on the Effective Date shall be extinguished or shall be deemed to be extinguished and all such shares held by the Transferee Company shall be cancelled and shall be deemed to be cancelled without any further application, act or deed. It is clarified that on and from the Effective Date, any equity shares held by the Transferor Company 1 and preference shares held by the Transferee Company in the Transferor Company 2 shall stand cancelled. Further, the investment in the shares of the Transferor Company 2, appearing in the books of accounts of the Transferee Company shall, without any further act or deed, stand cancelled.

17. SAVING OF CONCLUDED TRANSACTIONS

- 17.1 Subject to the terms of the Scheme, the amalgamation of the Undertaking 2 and continuance of proceedings by or against the Transferee Company, as provided herein, shall not affect any transactions or proceedings already concluded by the Transferor Company 2 before the Effective Date, to the end and intent that the Transferee Company accepts and adopts all acts, deeds and things done and executed by and/or on behalf of the Transferor Company 2 in relation to the Undertaking 2 as acts, deeds and things done and executed by and on behalf of the Transferee Company.

18. CONDUCT OF BUSINESS TILL EFFECTIVE DATE

- 18.1 With effect from the Appointed Date and up to the Effective Date:
- 18.1.1 For and on account of and in trust for the Transferee Company, the Transferor Company 2 shall, in respect of the Undertaking 2, be deemed to have been carrying on and shall carry on their respective business and activities and shall hold and deal with their respective properties and assets including any transfer, disposal or sale of such assets/undertaking or part thereof and properties and in a manner that it does not adversely impact the interest of any stakeholder. The Transferor Company 2 hereby undertakes to deal with the said assets/undertaking or properties including any transfer, disposal or sale, as per Applicable Laws until the Effective Date.



- 18.1.2 On or after the Appointed Date but before the Effective Date, all the profits or income accruing or arising to the Transferor Company 2, in respect of the Undertaking 2 or expenditure or losses arising to or incurred by the Transferor Company 2 in respect of the Undertaking 2, shall for all purposes and intents be treated and be deemed to be and accrue as the profits or incomes or expenditure or losses (as the case may be) of the Transferee Company.
- 18.1.3 The Transferor Company 2 shall carry on its business and activities with reasonable diligence and prudence and shall not without the prior written consent of the Transferee Company, alienate, transfer, sell, charge, mortgage, Encumber or otherwise deal with or dispose-off, the Undertaking 2 or part thereof, except in the ordinary course of business. The Transferor Company 2 shall not undertake any new businesses within the Undertaking 2 except in the ordinary course of its business.
- 18.1.4 The Transferor Company 2 shall not utilize the profits, for the purpose of declaring or paying any dividend in respect of the period falling on and after the Appointed Date.
- 18.1.5 Where any of the liabilities and obligations attributed to the Undertaking 2, has been discharged by the Transferor Company 2, on or after the Appointed Date but before the Effective Date, such discharge shall be deemed to have been for and on behalf of the Transferee Company.
- 18.1.6 All loans raised and liabilities incurred by the Transferor Company 2, after the Appointed Date but before the Effective Date and subsisting as on the Effective Date, for operations of the Undertaking 2 shall be discharged by the Transferee Company on or after the Effective Date.
- 18.1.7 The Transferee Company and/or Transferor Company 2 shall be entitled, pending the sanction of the Scheme, to apply to the concerned Governmental Authorities, if required under Applicable Law or deemed appropriate, for such consents, approvals and sanctions which may be required to carry on the business of the Transferor Company 2.
- 18.1.8 The Transferor Company 2 shall not vary the terms and conditions of service of the employees or conclude settlements with unions or employees, except in the ordinary course of business or consistent with past practice or pursuant to any pre-existing obligation without the prior written consent of the Board of Directors of the Transferee Company.



PART IV

GENERAL TERMS AND CONDITIONS

19. COMPLIANCE WITH TAX LAWS AS APPLICABLE TO THE SCHEME

- 19.1 This Scheme is in compliance with the conditions relating to "amalgamation" as specified under Section 2(1B) of the IT Act. If any terms or provisions of the Scheme are found or interpreted to be inconsistent with the provisions of the said Section at a later date including resulting from a retrospective amendment of law or for any other reason whatsoever, till the time the Scheme becomes effective, the provisions of the said Section of the IT Act shall prevail and the Scheme shall stand modified to the extent determined necessary to comply with Section 2(1B) of the IT Act.
- 19.2 On or after the Effective Date, the Companies shall have the right to revise their respective financial statements and tax returns along with the prescribed forms, filings and annexures under the provisions of IT Act (including for the purpose of re-computing income-tax under the normal provisions, minimum alternative tax, and claiming other tax benefits), Wealth Tax Act, 1957, customs duty law, central sales tax, applicable state value added tax, service tax laws, excise duty laws, goods and services tax, VAT law or other tax laws, and to claim refunds and/or credits for taxes paid (including minimum alternate tax, tax deducted at source, goods and service tax etc.), and to claim tax benefits etc. and for matters incidental thereto, if required to give effect to the provisions of the Scheme.
- 19.3 As and from the Effective Date, all tax proceedings shall be continued and enforced by or against the Transferee Company in the same manner and to the same extent as would or might have been continued and enforced by or against the Transferor Companies. Further, all tax proceedings shall not in any way be prejudicially affected by reason of the amalgamation of the Transferor Companies with the Transferee Company or anything contained in the Scheme.
- 19.4 Any tax liabilities under the IT Act, Wealth Tax Act, 1957, customs duty laws, central sales tax, applicable state value added tax, service tax laws, excise duty laws, goods and service tax, VAT law or other applicable laws/ regulations dealing with taxes, duties, levies allocable or related to the business of the Transferor Companies to the extent not provided for or covered by tax provision in the accounts made as on the date immediately preceding the Appointed Date shall be transferred or stand transferred to Transferee Company. Any surplus in the provision for taxation/ duties/ levies account including advance tax and tax deducted at source and MAT credit as on the date immediately preceding the Appointed Date will also be transferred to the account of the Transferee Company.



- 19.5 Any refund under the IT Act, Wealth Tax Act, 1957, customs duty laws, central sales tax, applicable state value added tax, service tax laws, excise duty laws, goods and service tax, VAT law or other applicable laws/ regulations dealing with taxes/ duties/ levies allocable or related to the business of the Transferor Companies due to Transferor Companies consequent to the assessment made on the Transferor Companies and for which no credit is taken in the accounts as on the date immediately preceding the Appointed Date shall also belong to and be received by the Transferee Company.
- 19.6 Any tax payment (including, without limitation, income-tax, minimum alternate tax, taxes withheld/ paid in a foreign country, dividend distribution tax, securities transaction tax, sales tax, excise duty, custom duty, service tax, value added tax, goods and service tax etc.) whether by way of deduction at source, advance tax or otherwise, howsoever, by the Transferor Companies in respect of the profits or activities or operation of the business after the Appointed Date, the same shall be deemed to be the corresponding item paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly. Further, any tax deducted at source by the Transferor Companies/ the Transferee Company including on payables to the Transferee Company/ the Transferor Companies including on account of investments (if any) held by the Transferee Company in the Transferor Companies which has been deemed not to be accrued, shall be deemed to be advance taxes paid by the Transferee Company and shall, in all proceedings, be dealt with accordingly.
- 19.7 Obligation for deduction of tax at source on any payment made by or to be made by the Transferor Companies under the IT Act, Wealth Tax Act, 1957, customs duty laws, central sales tax, applicable state value added tax, service tax laws, excise duty laws, goods and service tax, VAT law or other applicable laws/ regulations dealing with taxes/ duties/ levies shall be made or deemed to have been made and duly complied with by the Transferee Company.
- 19.8 All deductions otherwise admissible to the Transferor Companies including payment admissible on actual payment or on deduction of appropriate taxes or on payment of tax deducted at source (such as under Sections 40, 40A, 43B etc. of the IT Act) shall be available for deduction to the Transferee Company as it would have been available to the Transferor Companies.
- 19.9 The accumulated losses and the allowance for unabsorbed depreciation of the Transferor Companies shall be deemed to be the loss and the allowance for unabsorbed depreciation of the Transferee Company in accordance with Section 72A of the IT Act.



19.10 Further, the losses and unabsorbed depreciation as per books of account of the Transferor Companies as on the date immediately preceding the Appointed Date shall be deemed to be the brought forward losses and unabsorbed depreciation of the Transferee Company for the purpose of computation of book profit to calculate the minimum alternate tax payable by the Transferee Company.

19.11 Without prejudice to the generality of the above, accumulated losses and allowance for unabsorbed depreciation as per Section 72A of the IT Act, losses brought forward and unabsorbed depreciation as per books of account, credits (including, without limitation income tax, minimum alternate tax, tax deducted at source, taxes withheld/ paid in a foreign country, wealth tax, service tax, excise duty, central sales tax, applicable state value added tax, customs duty drawback, goods and service tax etc.) to which the Transferor Companies are entitled to in terms of applicable laws, shall be available to and vest in the Transferee Company upon coming into effect of this Scheme.

20. DISSOLUTION OF TRANSFEROR COMPANIES

20.1 Upon the Scheme becoming effective, the Transferor Companies shall stand dissolved without being wound up without any further act or deed.

21. AMENDMENT TO MEMORANDUM OF ASSOCIATION OF THE TRANSFEE COMPANY, VALIDITY OF EXISTING RESOLUTIONS ETC.

21.1 The memorandum of association of the Transferee Company relating to the authorised share capital shall, without any further act, instrument or deed, be and stand altered, modified and amended pursuant to Section 13 and other applicable provisions of the Act, as the case may be.

21.2 In order to carry on the activities currently being carried on by the Transferor Company 2 in relation to the Undertaking 2, upon coming into effect of the Scheme, the applicable main objects in the memorandum of association of the Transferor Company 2 shall be added to the matters which are necessary for furtherance of the objects of the memorandum of association of the Transferee Company, to the extent such objects are not already covered by those of the Transferee Company.

21.3 It shall be deemed that the members of the Transferee Company have also resolved and accorded all relevant Consents under Section 13 of the Act. It is clarified that there will be no need to pass a separate shareholders' resolution as required under Section 13 of the Act for the amendment to the memorandum of association of the Transferee Company.



- 21.4 Upon the coming into effect of the Scheme and with effect from the Appointed Date, the resolutions of the Board of Directors of the respective Transferor Companies, including resolutions of any committees authorized by and comprising *inter alia* of members of the Board of Directors of the Transferor Companies, as are considered necessary by the Board of Directors of the Transferee Company and which are validly subsisting, shall be considered as resolutions of the Transferee Company.

22. APPLICATION TO NCLT

- 22.1 The Companies, shall, with all reasonable dispatch, simultaneously, make necessary applications/ petitions in the jurisdiction of the NCLT, where the registered offices of the Companies are situated at the time of filing, for sanctioning this Scheme and all matters ancillary or incidental thereto under Sections 230 to 232 and other applicable provisions of the Act.

23. MODIFICATIONS OR AMENDMENTS TO THE SCHEME

- 23.1 The Companies by their respective Board of Directors or such other person or persons, as the respective Board of Directors may authorize including any committee or sub-committee thereof, may, collectively, make and/or Consent to any modifications/ amendments to the Scheme or to any conditions or limitations that NCLT or any other Governmental Authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them. The Companies by their respective Board of Directors or such other person or persons, as the respective Board of Directors may authorize including any committee or sub-committee thereof, shall be authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith. In case, post approval of the Scheme by NCLT, there is any confusion in interpreting any clause of this Scheme, or otherwise, the Board of Directors of the respective Companies shall jointly have complete power to take the most sensible interpretation so as to render the Scheme operational.

24. WITHDRAWAL OF THE SCHEME

- 24.1 The Companies shall be at liberty to withdraw this Scheme at any time as may be mutually agreed by the Board of Directors of the respective Companies prior to the Effective Date. In such a case, the Companies shall respectively bear their own cost or as may be mutually agreed. It is hereby clarified that notwithstanding anything to the contrary contained in this Scheme, the Companies shall not be entitled to withdraw the Scheme unilaterally without the prior written Consent of the other.



25. SCHEME CONDITIONAL ON APPROVALS / SANCTIONS

25.1 The Scheme is and shall be conditional upon and subject to the following:

25.1.1 The requisite Consents, no-objections and approvals of the Stock Exchanges and SEBI to the Scheme in terms of the SEBI Circular and/or SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015, on terms acceptable to the Companies;

25.1.2 The Scheme being approved by respective requisite majorities in numbers and value of such classes of members and creditors of the Companies as may be directed by NCLT or required under Applicable Law;

25.1.3 The Scheme being approved by the public shareholders of the Transferee Company and the Transferor Company 2 through e-voting in terms of Paragraph 9(a) of Part I of Annexure I of the SEBI Circular and the Scheme shall be acted upon only if vote cast by the public shareholders in favour of the Scheme are more than the number of votes cast by the public shareholders against it.

25.1.4 The Scheme being sanctioned by NCLT under Section 230 to 232 of the Act, on terms as originally approved by or with such modifications as are acceptable to the Companies;

25.1.5 There having been no interim or final ruling, decree or direction by any Governmental Authority, which has not been stayed by an appellate authority, which has the effect of prohibiting or making unlawful, the consummation of the proposed Scheme by any of the Companies; and

25.1.6 The certified copy of the NCLT Order being filed with the Registrar of Companies by the respective Companies.

26. EFFECT OF NON-RECEIPT OF APPROVALS/ SANCTIONS

26.1 The Scheme shall not come into effect unless the aforementioned conditions mentioned in Clause 25.1 above are satisfied and in such an event, the Scheme shall become null and void. Unless each of the conditions are satisfied, no rights and liabilities whatsoever shall accrue to or be incurred inter se the Companies or their respective shareholders or creditors or employees or any other Person.

27. COSTS

27.1 All costs, charges and expenses including stamp duty and registration fee of any deed, document, instrument or the NCLT Order including this Scheme or in relation to the Scheme and of carrying out and implementing the terms and provisions of this Scheme and incidental to the completion of arrangement in pursuance of this Scheme shall be borne and paid by the Transferee Company.



28. MISCELLANEOUS

- 28.1 Upon coming into effect of the Scheme, all and any benefits which the Transferor Company 2 is entitled to or that are subsisting by virtue of the resolution plan approved by the Adjudicating Authority pursuant to the IBC Order, shall, without any further act, instrument or deed, be in full force and effect against or in favour of the Transferee Company, and may be enforced by or against the Transferee Company.
- 28.2 The Transferor Company 2 shall provide notification/ procure the requisite approval/ consent to the extent required under the Applicable Law, from any relevant governmental authorities including State Industries Promotion Corporation of Tamil Nadu Limited, Uttar Pradesh State Industrial Development Authority, Odisha Industrial Infrastructure Development Corporation in relation to the Scheme.
- 28.3 If any part and/ or provision of this Scheme hereof is invalid, ruled illegal by any court or tribunal of competent jurisdiction or unenforceable under present or future laws or is unworkable, then it is the intention of the parties to the Scheme that such provision shall be severable from the remainder of the Scheme, and the Scheme shall not be affected thereby, unless the deletion of such part and/ or provision shall cause this Scheme to become materially adverse to any party, in which case the parties to the Scheme shall attempt to bring about a modification in the Scheme, as will best preserve for such parties the benefits and obligations of the Scheme, including but not limited to such part and/ or provision.



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CA (CAA) 129/MB II//2019

MA/ 868/ 2020 in CA (CAA) 3083/MB/2019

CA/ 1056/ 2020 in CA (CAA) 3083/MB/2019

MA/ 859 of 2020 / 2020 in CA (CAA) 129/MB II//2019

CA/ 1081/ 2020 in CA (CAA) 129/MB II//2019

In the matter of the Companies Act, 2013;

And

In the matter of Applications under Sections 230
- 232 of the Companies Act, 2013 read with
Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016;

And

In the matter of

TATA STEEL LIMITED

[CIN: L27100MH1907PLC000260], a company
incorporated under the Indian Companies Act,
1882 and a public limited company within the
meaning of the Companies Act, 2013, having its
registered office at Bombay House, 24, Homi
Mody Street, Fort, Mumbai 400001,
Maharashtra;

And

In the matter of

BAMNIPAL STEEL LIMITED

[CIN: U27310MH2018PLC304494], a company
incorporated under the Companies Act, 2013,
having its registered office at Tarapur Complex,
Plot No. F8, MIDC, Tarapur Industrial Area,
Palghar, Thane 401506, Maharashtra;

And

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In the matter of

TATA STEEL BSL LIMITED

(formerly known as 'Bhushan Steel Limited')
[CIN: L74899DL1983PLC014942], a company
incorporated under the Companies Act, 1956
and a public limited company within the
meaning of the Companies Act, 2013, having its
registered office at Ground Floor, Mira
Corporate Suites, Plot No. 1 & 2, Ishwar Nagar,
Mathura Road, South Delhi,
New Delhi 110065;

And

In the matter of

Composite Scheme of Amalgamation of
Bamnival Steel Limited and Tata Steel BSL
Limited (formerly known as 'Bhushan Steel
Limited') into and with Tata Steel Limited.

Tata Steel Limited [CIN:)
L27100MH1907PLC000260], a company)
incorporated under the Indian Companies Act,)
1882 and a public limited company within the)
meaning of the Companies Act, 2013, having)
its registered office at Bombay House, 24,)
Homi Mody Street, Fort, Mumbai 400001,) ...Applicant Company 1/
Maharashtra) Transferee Company

Bamnival Steel Limited)
[CIN: U27310MH2018PLC304494], a)
company incorporated under the Companies)
Act, 2013 and having its registered office at)
Tarapur Complex, Plot No. F8, MIDC,)

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Tarapur Industrial Area, Palghar, Thane) ...Applicant Company 2/
401506, Maharashtra) Transferor Company 1

Tata Steel BSL Limited [CIN:)
L74899DL1983PLC014942], a company)
incorporated under the Companies Act, 1956)
and a public limited company within the)
meaning of the Companies Act, 2013, having)
its registered office at Ground Floor, Mira)
Corporate Suites, Plot No. 1 & 2, Ishwar)
Nagar, Mathura Road, South Delhi, New) ...Applicant Company 3/
Delhi 110065) Transferor Company 2

Order delivered on 11.01.2021

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI H.P. CHATURVEDI

HON'BLE MEMBER (TECHNICAL) : SHRI RAVIKUMAR DURAISAMY

For the Applicant Companies:

Sr. Counsel. Mr. Zal Andhyarujina, Adv. Karan Bhide, i/b. AZB & Partners,
Advocates for the Applicant Companies 1 and 2 and P&A Law Offices,
Advocates for the Applicant Company 3 (**collectively referred as “Applicant
Companies”**)

Per: Hon'ble SHRI RAVIKUMAR DURAISAMY

ORDER

1. Heard Ld. Sr. Counsel Mr. Zal Andhyarujina appearing for the Applicant Companies. By these Miscellaneous Applications, the Applicant Companies seek modifications of the order dated 20.02.2020 (**“Order”**) passed in the captioned Company Scheme Applications.
2. Ld. Sr Counsel submits that this Hon'ble Tribunal heard the captioned Company Scheme Applications on 24.01.2020 and thereafter reserved

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the matter for orders. On 20.02.2020, the captioned Company Scheme Applications were listed before this Hon'ble Tribunal for "pronouncement of order" at which time the said applications were "allowed". Thereafter, on 25.02.2020, a formal copy of the Order was made available to the Applicant Companies, when it was uploaded on the official website of the National Company Law Tribunal, Mumbai. In terms of the said Order, this Hon'ble Tribunal was pleased to inter-alia direct as follows:

“4. A meeting of the Equity Shareholders (holding Fully Paid as well as Partly Paid Equity Shares) of the Applicant Company 1, be convened and held at Yashwantrao Chavan Pratishthan Auditorium, Y.B. Chavan Centre, General Jagannath Bhosle Marg, Next to Sachivalaya Gymkhana, Mumbai 400021 on Tuesday, March 31, 2020 at 3 p.m., or any adjourned dates thereof, for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme.

5. A meeting of the Equity Shareholders of the Applicant Company 3, be convened and held at Lakshmi Pat Singhania Auditorium, PHD Chamber of Commerce and Industry, PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi 110016 on Monday, March 23, 2020 at 10:30 a.m., or any adjourned dates thereof, for the purpose of considering, and if thought fit, approving, with or without modification(s), the proposed Scheme.

9 In view of Regulation 44(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Applicant Company 1 and the Applicant Company 3 are required to provide the facility of remote e-voting to its shareholders in respect of all shareholder resolutions. Additionally, the Applicant Company 1 and the Applicant Company 3 proposes to offer the facility of voting by postal ballot to its Equity Shareholders (holding Fully Paid as well as Partly Paid Equity Shares) in

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respect of the resolution to be passed at the said meetings of the Equity Shareholders. Accordingly, the Equity Shareholders (holding Fully Paid as well as Partly Paid Equity Shares) of the Applicant Company 1 and the Equity Shareholders of the Applicant Company 3 are allowed to avail remote e-voting facility and/or voting by postal ballot and/or voting by ballot/e-voting at the venue, for the said meetings to be held on Tuesday, March 31, 2020 at 3 p.m. and Monday, March 23, 2020 at 10:30 a.m. respectively. The e-voting facility and postal ballot facility for the Equity Shareholders (holding Fully Paid as well as Partly Paid Equity Shares) of the Applicant Company 1 and the Equity Shareholders of the Applicant Company 3 shall be provided in compliance with the conditions specified under the Companies (Management and Administration) Rules, 2014 as substituted by the Company (Management and Administration) Amendment Rules, 2015 and Regulation 44 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Secretarial Standard on General Meetings (SS-2) issued by The Institute of Company Secretaries of India, as applicable.

20. The Counsel for the Applicant Companies submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders as contemplated under Section 230(1)(b) and not in accordance with the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise and/or arrangement with the creditors and the debenture holders and as no sacrifice is called for by the creditors and the debenture holders, only a meeting of the shareholders is proposed to be held with in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. Therefore, the meeting of the Secured Creditors of the Applicant Company 1 and the Applicant Company 3, Unsecured Creditors of the Applicant Companies 1, 2 and 3 and the Unsecured Debenture Holders of

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the Applicant Company 1 are not required to be convened. The Counsel for the Applicant Companies further submits that the Applicant Companies may be allowed to issue individual notices to the creditors (as applicable) as on July 31, 2019 and debenture holders (as applicable) as on August 2, 2019, stating therein that they may submit their representations in relation to the Scheme, if any, to the Hon'ble Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the respective Applicant Companies. Further, the Applicant Company 1 do not have any Secured Debenture Holders, the Applicant Company 2 do not have any Secured Creditors, Secured Debenture Holders and Unsecured Debenture Holders and the Applicant Company 3 do not have any Secured Debenture Holders and Unsecured Debenture Holders. Accordingly, the question of convening a meeting of the Secured Debenture Holders of the Applicant Company 1, the Secured Creditors, Secured Debenture Holders and the Unsecured Debentures Holders of the Applicant Company 2 and the Secured Debenture Holders and the Unsecured Debenture Holders of the Applicant Company 3 does not arise. Accordingly, this bench hereby directs the Applicant Company 1 to issue notices to its sole Secured Creditor as on July 31, 2019 and all its Unsecured Debenture Holders as on August 2, 2019, the Applicant Company 2 to issue notices to all its Unsecured Creditors as on July 31, 2019 and the Applicant Company 3 to issue notices to all its Secured Creditors as on July 31, 2019 by courier/ registered post/ speed post/ hand delivery or through e-mail (to those creditors/ debenture holders whose e-mail addresses are duly registered with the Applicant Companies), at their last known address as per the records of the Applicant Companies, with a direction that they may submit their representations, if any, to the Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy of such

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representations shall simultaneously be served upon the respective Applicant Companies. Further, this bench hereby directs the Applicant Company 1 and the Applicant Company 3 to issue notices to all those Unsecured Creditors having value of Rupees 10,00,000/- (Rupees Ten Lakhs only) and more, as on July 31, 2019,???? by courier/ registered post/ speed post/ hand delivery or through e-mail (to those creditors whose e-mail addresses are duly registered with the Applicant Company 1 and the Applicant Company 3, at their last known address as per the records of the Applicant Company 1 and the Applicant Company 3 respectively, with a direction that they may submit their representations, if any, to the Tribunal within 30 (thirty) days from the date of receipt of the said notice and copy of such representations shall simultaneously be served upon the Applicant Company 1 and the Applicant Company 3.”

3. Ld. Sr. Counsel submits that in terms of the said Order dated 20.02.2020, this Hon’ble Tribunal was pleased to inter-alia direct the Applicant Company 1 and Applicant Company 3 to convene a physical meeting of their Equity Shareholders on 31.03.2020 and 23.03.2020 respectively for the purpose of considering, and if thought fit, approving, the proposed Scheme, at a common venue. The Ld. Sr. Counsel submits that due to the prevailing COVID-19 pandemic, holding of a general meeting by the Applicant Company 1 and Applicant Company 3 (requiring physical presence of members at a common venue), as directed, had become infeasible during the currency of the pandemic. Ld. Sr. Counsel submits that the Applicant Company 1 and Applicant Company 3 have a vast number of shareholders who cannot be accommodated at a common venue whilst at the same time maintaining social distancing norms. Ld. Sr. Counsel further submits that it is presently unknown as to when the ongoing pandemic will stabilize such as to permit the holding of meetings requiring physical presence of the members at a common venue and

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that in the event the Applicant Company 1 and Applicant Company 3 are required to conduct physical meetings of their members, it is likely that such meetings will be inordinately and unduly delayed beyond reasonable time. The Ld. Sr. Counsel places reliance on Section 232(1) of the Companies Act, 2013. The Ld. Sr. Counsel therefore submits that the Applicant Company 1 and Applicant Company 3 be permitted to hold a meeting of its members by way of video-conferencing and/ or other audio-visual means.

4. Ld. Sr Counsel has submitted that thereafter, the Applicant Company 1 and Applicant Company 3 filed application bearing no. CA/1056/2020 and CA/1081/2020 respectively *inter alia* to seek the following reliefs:
(a) pass necessary orders for amendment/modification of the Appointed Date from April 1, 2019 to April 1, 2020; (b) permit Applicant Company 1 and Applicant Company 2 to hold the meeting of Equity Shareholders through the mechanism of e voting through video conferencing or other audio visual means and (c) issue fresh directions to serve notices upon all secured creditors and unsecured creditors of Applicant Company 1 and Applicant Company 2 having outstanding of INR 10 Lakh and more as on 31.3.2020. The application was listed on 17.09.2020 when the Hon'ble Tribunal *inter-alia* sought clarity on the modalities of convening meetings of large number of shareholders through video conferencing/ other audio-visual means from the Regional Director, MCA.
5. The Applicant Company 1 and Applicant Company 3 filed an additional affidavit on 30.09.2020 submitting that virtual meetings involving large number of shareholders can be conducted using the virtual platform of National Securities Depository Limited (NSDL) through Cisco WebEx for up to 3,000 participants and through Webcast up to 20 lakh participants, which would sufficiently cover the number of members of the Applicant Company 1 and Applicant Company 3. The Applicant Companies also placed on record the General Circular dated 28.09.2020 wherein the MCA has extended the

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conducting of meeting through Video Conferencing (VC) and Other Audio-Visual Means (OVAM) till December 31, 2020, or until further orders, whichever is earlier.

6. That in compliance with orders dated 17.09.2020; 30.09.2020 and 15.10.2020, on 02.11.2020, MCA through the Regional Director, Western Region filed an affidavit stating that virtual platform set by NSDL is authorised by the MCA for holding of general meeting and also enables shareholders to cast vote in electronic form in respect of postal ballot/general meeting. In Paragraph No. 6 of the affidavit, MCA submitted that they do not have objection to the shareholders meeting proposed to be convened through video conference or OAVM. In this context, certain check list/broad guidelines for convening meeting through video conferencing/ other audio-visual means are also provided by MCA annexed as **Exhibit C** to the affidavit. The checklist/broad guidelines are reproduced below for ready reference:

Sr. No.	Activity
	(A) Prior to the meeting
1.	<p>To avail the VC / OA VM facility of Service Providers (NSDL/CDSL) for conducting meeting. Care should be taken to cover following points:</p> <ul style="list-style-type: none">• Meeting through VC / OA VM facility should allow two ways teleconference or WebEx facility to shareholders.• Participants should be allowed to post questions concurrently or given time to submit questions in advance (at least 10 days before meeting) on the e-mail address of the Company.• The large shareholders (holding 2% or more), promoters, institutional investors, directors, KMPs, Chairperson of Audit

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	Committee, NRC, SC, auditors should be allowed to attend the meeting without restriction.
2.	Before dispatch of Notice, a newspaper advertisement to be published as per direction of NCLT atleast one in vernacular newspaper in the principal vernacular language of the district in which registered office of the Company is situated and having a wide circulation in that district and atleast once in English language in an English newspaper having a wide circulation in that district, preferably both newspaper having electronic editions.
3.	<p>Newspaper Advertisement should cover the following:</p> <ul style="list-style-type: none">• Statement that the meeting will be convened through VC / OA VM in compliance with applicable provisions of the Act read with this circular.• The date and time of meeting through VC or OA VM.• Availability of notice of the meeting on the website of the Company.• The manner in which members who are holding shares in physical form or who have not registered their e-mail ids with the Company can cast their votes through remote e-voting or through the e-voting system during the meeting.• the manner in which the persons who have not registered their email addresses with the company can get the same registered with the company;• any other detail considered necessary by the company
4.	To dispatch the Notice to the Shareholders
5.	<p>To share the participant link to the following:</p> <ol style="list-style-type: none">1. Chairman appointed by NCLT

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	2. Company Secretary
6.	To share the link to speaker shareholders for attending the meeting.
	(B) On the date of Meeting:
7.	The facility for joining the Meeting shall be kept open atleast 15 minutes before the time scheduled to start the meeting and shall not be closed till the expiry of 15 minutes after such scheduled time.
8.	To hold the Meeting at scheduled time.
9.	The members who are present at the Meeting and have not cast their votes through remote e-voting shall be allowed to cast their votes through e-voting at the meeting.

Note: Service Provider will give Demo of the Meeting to ensure smooth conducting of the meeting and to avoid any technical issues during the meeting.

Applicant Company 1 and Applicant Company 3 submits that the checklist/broad guidelines shall be complied with.

7. So far as the prayer for change in appointed date is concerned, Ld. Sr. Counsel further submits that the Applicant Companies have filed Additional Affidavits on November 25, 2020 wherein the Applicant Companies have sought to withdraw the said prayer. Accordingly, the Ld. Sr. Counsel submits that the Applicant Companies are not pressing for the prayer of change in 'Appointed Date' and the original 'Appointed Date' of April 1, 2019 in the Scheme will remain unchanged.

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8. Ld. Sr. Counsel further submits that the direction of this Tribunal to give notices to those secured and unsecured creditors of the Applicant Companies as on 31.07.2019 and 02.08.2019, may not depict the true and current picture of the creditors of the Applicant Companies, as on date. The Ld. Sr. Counsel therefore submits that this Hon'ble Tribunal be pleased to issue fresh directions to serve notices upon secured and unsecured creditors having value of Rs.10,00,000/- (Rupees Ten Lakhs) and above of the Applicant Companies, not earlier to 30.09.2020. Further, Applicant Company 2 does not have any secured or unsecured creditors as on 30.09.2020.
9. Accordingly, it is ordered that in partial modification of the Order dated 20.02.2020, this Tribunal hereby passes the following directions:
- (a) That in view of the current extra-ordinary circumstances due to the COVID-19 pandemic prevailing in the country, the meeting of the equity shareholders of Applicant Company 1 be convened on **24.02.2021 or 26.02.2021 or 01.03.2021 at 3 PM** or any adjourned dates thereof, for the purpose of considering, and, if thought fit, approving, the proposed Scheme of Arrangement (Scheme), through video conferencing and/ or other audio visual means, without holding a general meeting requiring the physical presence of shareholders at a common venue, as the same in the current COVID-19 environment mandating social distancing norms shall not be feasible.
- (b) That in view of the current extra-ordinary circumstances due to the COVID-19 pandemic prevailing in the country, the meeting of the equity shareholders of Applicant Company 3 be convened on **24.02.2021 or 26.02.2021 or 01.03.2021 at 11AM** or any adjourned dates thereof, for the purpose of considering, and, if thought fit, approving, the proposed Scheme of Arrangement (*Scheme*), through video conferencing and/ or other audio visual means, without holding a general meeting requiring the physical presence of shareholders at a common venue, as the same in the current COVID-19 environment mandating social distancing norms shall not be feasible.

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- (c) The Applicant Company 1 and Applicant Company 3 shall comply with the aforesaid checklist/ board guidelines issued by the MCA vide its Affidavit dated 02.11.2020.
- (d) The Applicant Company 1 and the Applicant Company 3 undertake that the meetings to be conducted by video-conferencing or other audio-visual means, as ordered above, shall be duly recorded and that the unedited raw footage shall be preserved and made available for verification, if deemed necessary at a later stage.

The notices referred to in paragraph 20 of the said Order dated 20.02.2020 shall be sent by Applicant Company 1 to its secured creditors and unsecured creditors having outstanding of Rs. 10,00,000/- (Rupees Ten Lakhs) and more as on 30.09.2020. No notices are required to be sent by the Applicant Company 2 as it does not have any secured or unsecured creditors as on 30.09.2020. The Applicant Company 3 to serve notices upon all the secured creditors and unsecured creditors having outstanding of Rs.10,00,000/- (Rupees Ten Lakhs) and more as on 30.09.2020.

- (e) As per proviso to section 230 (3) above Notice to Members, Creditors and Debenture holders shall also be placed on the website of the companies and applicant company 1 and 3 being listed companies these documents shall be sent to the SEBI and Stock Exchanges where the securities of these companies are listed, for placing on their website in addition to newspaper publications.
- (f) The Applicant Companies shall file proof of compliance electronically within 10 (ten) days from the date on which the last of the compliances as stated in above paragraphs and Order dated 20.02.2020, are made to report to this Tribunal that the directions regarding issue of notices have been duly complied with.
- (g) All notices including notice of postal ballot to the shareholders and notices to the creditors and/or debenture holders of the Applicant Companies will be sent in electronic form. Shareholders, creditors

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and/or debenture holders whose e-mail address are not available, shall be provided an opportunity to register their e-mail address to receive the notice of the meeting.

- (h) Paragraph 9 of the Order dated 20.02.2020 stands modified *mutatis mutandis* with reference to the above referred dates.
 - (i) Except the directions modified herein, all other directions as passed in Order dated 20.02.2020 remain unaltered.
10. The Bench directs Applicant company 1 and 3 to provide brief details about date of Board Resolution, valuation, method adopted, share exchange ratio and the Appointed date etc in the notice to be sent to the shareholders as mentioned above for a taking an informed decision.
11. The captioned Miscellaneous Applications are accordingly disposed off.

Sd/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

Sd/-

**H.P.CHATURVEDI
MEMBER (JUDICIAL)**